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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1928

No. 220

JOHN JOHNSON, PETITIONER,

vs.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED JUNE 22, 1928

CERTIORARI GRANTED OCTOBER 8, 1928

(33,529)

(33,529)

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IN UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF NEW YORK

WRIT OF ERROR

THE UNITED STATES OF AMERICA,
Second Judicial Circuit, ss:

The President of the United States of America to Honorable Judges of the District Court of the United States for the Eastern District of New York, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment and orders, of a plea which is in the said District Court, before you, or some of you, between John Johnson, plaintiff, and the United States Shipping Board Emergency Fleet Corporation, defendant, a manifest error hath happened, to the great damage of the said John Johnson, plaintiff, as by his complaint appears, we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf,

Do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Second Circuit, together with this writ, so that you have the same at the Court Rooms of the said Circuit Court, in the said Circuit, on the 20th day of July, 1927, in the said Circuit Court of Appeals, to be then and there held, that the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, shall be done.

[fol. 2] Witness the Honorable William Howard Taft, Chief Justice of the United States, this 20th day of June, in the year of Our Lord one thousand nine hundred and

twenty-seven, and in the one hundred and fifty-first year of the independence of the United States of America.

Percy G. B. Gilkes, Clerk of the District Court of United States, Eastern District of New York. (Seal.)

Dated June 20, 1927.

The foregoing writ is hereby allowed.

Marcus B. Campbell, United States District Judge.

[fol. 3] In Supreme Court of New York, County of Richmond

John Johnson, Plaintiff,

against

United States Shipping Board Emergency Fleet Corporation, Defendant

Summons

To the above named defendant:

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the plaintiff's attorney within twenty days after the service of this summons, exclusive of the day of service. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated March 29th, 1923.

Silas B. Axtell, Attorney for Plaintiff. Office and Post Office address: Eleven Moore Street, Borough of Manhattan, City of New York.

[fol. 4] In Supreme Court of New York

[Title omitted]

Complaint

Plaintiff complaining, alleges:

First. Upon information and belief, the defendant, United States Shipping Board Emergency Fleet Corpora-

tion, is a foreign corporation created under the laws of the District of Columbia, having an office and place of business in the Borough of Manhattan, City of New York.

Second. Upon information and belief, the defendant owned, operated, managed, and controlled an American merchant vessel known as the S. S. "Jacksonville."

Third. That on or about the 1st of August, 1920, the Steamship "Jacksonville" was lying at the port of Jacksonville, Florida. That on or about that day, the plaintiff was invited by the boatswain of the Steamship "Jacksonville" to go on board the said vessel in order to procure or attempt to procure employment as a member of the crew of that vessel.

Fourth. That while leaving the said vessel after having been thereon as aforesaid, and as plaintiff was going [fol. 5] ashore, and as he was crossing a gang-plank from the Steamship "Jacksonville" which gang-plank had not been made secure and which was carelessly and negligently permitted to remain insecure and unsafe, he was suddenly without any notice or warning, thrown from the said gang-plank into the water alongside of the Steamship "Jacksonville," whereby he sustained severe, serious, and permanent injuries.

Fifth. That plaintiff thereby became sick, sore, lamed, and disabled; has been and will be confined to his home and bed; has suffered and still suffers great pain; has been and will be prevented from working; has lost and will have to lose large sums of money which he otherwise would have earned; has paid out and will have to pay out large sums of money for medical and surgical attendance, for medicines, and for his maintenance and cure, all to his damage in the sum of $50,000.

Sixth. Upon information and belief, that said injuries were caused by reason of the negligence of the defendant, of the officers and seamen in command of the said vessel, and of other employees on board the said vessel; and by reason of the defective and improper condition of the gangway.

Wherefore plaintiff demands judgment in the sum of $50,000, with costs.

Silas B. Axtell, Attorney for Plaintiff. Office & P. O. address: Eleven Moore Street, New York City.

[fol. 6] *Duly sworn to by Silas B. Axtell. Jurat omitted in printing.*

[fol. 7] IN UNITED STATES DISTRICT COURT

JOHN JOHNSON, Plaintiff,

against

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, Defendant

ANSWER

The defendant, United States Shipping Board Emergency Fleet Corporation, by Ralph C. Greene, United States Attorney, Edgar G. Wandless of Counsel, answers the complaint herein, and says:

First. That it denies each and every allegation contained in Paragraph "Second" of the complaint herein.

Second. That it denies upon information and belief the allegations contained in Paragraphs "Third", "Fourth", "Fifth", "Sixth" of the complaint herein.

For a first and complete defense this defendant, upon information and belief, alleges:

Third. That it repeats and reiterates each and every admission, allegation and denial contained in Paragraphs "First" and "Second" inclusive of this answer, and alleges:

[fol. 8] Fourth. That on or about the 1st day of August, 1920, the Steamship "Jacksonville" was and now is a merchant vessel belonging to the United States of America and duly documented and registered in the name of the United States of America, and that this action is in effect a suit against the United States of America, and whatever

rights, if any, the plaintiff may have by reason of the facts alleged in the complaint herein arose out of, and are founded exclusively upon the Constitution and Laws of the United States of America, and particularly the Act of Congress approved March 9, 1920, authorizing suits against the United States of America in Admiralty, which Act the defendant, United States Shipping Board Emergency Fleet Corporation, pleads in bar of the plaintiff's recovery in this action.

For a second and complete defense this defendant, upon information and belief, alleges:

Fifth. That it repeats and reiterates each and every admission, allegation and denial contained in Paragraphs "First" to "Fourth" inclusive of this answer, and alleges:

Sixth. That on the 1st day of August, 1920, and at all times mentioned in the complaint herein the Steamship "Jacksonville" was and now is a merchant vessel belonging to the United States of America and duly documented and registered in the name of the United States of America; that the defendant, United States Shipping Board Emergency Fleet Corporation, did not, on the 1st day of August, 1920, nor at any time prior or subsequent to that [fol. 9] date, own or control under charter the said Steamship "Jacksonville," referred to in the complaint herein.

For a third and complete defense this defendant, upon information and belief, alleges:

Seventh. That it repeats and reiterates each and every admission, allegation and denial contained in Paragraphs "First" to "Sixth" inclusive of this answer, and alleges:

Eighth. That at all the times mentioned in the complaint the Steamship "Jacksonville" was fully provided with proper equipment, appliances, gang planks and safety devices; that the said equipment, appliances, gang planks and safety devices were all in proper repair and in good seaworthy condition; that the gang planks were properly and securely fastened and fixed and were in all respects safe, and if any injury was incurred by plaintiff at the time and place, or on the occasion mentioned in the com-

plaint, such injury was caused in whole or in part or was contributed to by negligence and want of care on the part of the plaintiff and was due to an open or obvious risk assumed by him in the business in which he was engaged, or in his coming on board the said Steamship "Jacksonville," and without any fault or negligence on the part of the Steamship "Jacksonville," its owners, officers or crew, or any one for whom they may have been responsible.

For a fourth and complete defense this defendant, upon information and belief, alleges:

Ninth. That it repeats and reiterates each and every ad-[fol. 10] mission, allegation and denial contained in Paragraphs "First" to "Eighth" inclusive of this answer, and alleges:

Tenth. That under the provisions of both the Suits in Admiralty Act, approved March 9, 1920, and the Merchant Marine Act, approved June 5, 1920, actions thereunder must be begun within a period not greater than two years prior to the commencement of the action; that the claim of the plaintiff herein is therefore barred, as it appears upon the facts of the complaint that the cause of action arose more than two years prior to the beginning of the action, to wit, on the 1st day of August, 1920, and that the action was not begun until April 6, 1923, at which time, the summons and complaint were served; all of which is pleaded as a bar to this action.

Wherefore defendant, United States Shipping Board Emergency Fleet Corporation, demands judgment dismissing the complaint, with costs.

Ralph C. Greene, U. S. Attorney. Edgar G. Wandless, of Counsel, Attorney for Defendant. Office & P. O. address: 45 Broadway, Borough of Manhattan, City of New York.

To Silas B. Axtell, Esq., Attorney for Plaintiff. Office & P. O. address: 11 Moore Street, City of New York.

[fol. 11] *Duly sworn to by E. A. Brennan. Jurat omitted in printing.*

[fol. 12] IN UNITED STATES DISTRICT COURT

JOHN JOHNSON, Plaintiff,

against

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, Defendant

JUDGMENT

The above entitled action having been duly tried before the Honorable Marcus B. Campbell, District Judge, and a jury in the District Court held in and for the Eastern District of New York, on the 25th, 26th, and 28th of March, 1927, and the jury having rendered a verdict in favor of the defendant and against the plaintiff on the 28th day of March, 1927, it is now, on motion of William A. De Grott, United States Attorney, Edgar G. Wandless, of Counsel.

Ordered, adjudged and decreed that the defendant United States Shipping Board Emergency Fleet Corporation recover of the plaintiff John Johnson the sum of $25, costs as taxed, and that the plaintiff have execution therefor.

Judgment entered this 18th day of April, 1927.

By the Court.

Percy G. B. Gilkes, Clerk, by J. G. Cochran, Deputy Clerk.

[fol. 13] IN UNITED STATES DISTRICT COURT

Bill of Exceptions

[Title omitted]

Before Hon. Marcus B. Campbell, U. S. D. J., and a Jury

Brooklyn, N. Y., March 25, 1927.

APPEARANCES OF COUNSEL

Silas B. Axtell, Esq., for plaintiff.

William A. DeGroot, Esq., for the defendant; by Mr. Cunningham.

Mr. Axtell made an opening statement to the jury, in the course of which Mr. Cunningham made the following statement:

Mr. Cunningham: This cigar box model is purely for the purpose of illustration, to give a picture of these ships, and not with the idea of conveying to their minds it is the condition on the ship.

The Court: This is only illustrative of what Mr. Axtell says he will prove.

Mr. Axtell: Yes, to aid us in demonstrating, and save a lot of talk.

[fol. 14] Mr. Axtell continued his opening, in the course of which Mr. Cunningham took the following objection:

Mr. Cunningham: I object to the statement the boatswain had authority to hire men and approve them. That is outside of the testimony.

The Court: Keep to the testimony.

Mr. Cunningham then made his opening statement to the jury, in the course of which Mr. Axtell made the following objection:

Mr. Axtell: I object to counsel's statement that plaintiff was not entitled to hospitalization in a Government hospital.

Mr. Cunningham: Because on the statement of Mr. Axtell he was not a seaman when he sustained the injuries.

The Court (to the jury): You take the law from me when I give it to you. You can hear what the attorneys say about the law, but I will tell you what the law is.

John Johnson, the plaintiff, called as a witness in his own behalf, being duly sworn testified as follows:

Direct examination.

By Mr. Axtell:

Q. How old are you?
A. 55 last 14th of August.
Q. What has been your occupation most of your life?
A. Seaman, boatswain.

Q. Are you a citizen of the United States?
A. Yes, sir.
Q. How long have you been a citizen?
A. Since 1920.
[fol. 15] Q. Where were you born?
A. Finland.
Q. Have you ever acted as boatswain on a ship?
A. Yes, about seven days before I was hurt I was on the S. S. "Standard Oil."
Q. As boatswain?
A. Yes, in the Gulf Trade.
Q. Have you been an ordinary seaman?
A. Yes, on square riggers.
Q. Have you ever worked as carpenter on a ship?
A. Yes, sir, on the "Swanson," Windsor, Nova Scotia.
Q. Do you remember the 1st of August, 1920?
A. Yes, sir.
Q. Where were you that day?
A. Sam's Hotel, East Bay Street, Jacksonville, Florida, until 4 o'clock.
Q. What happened then?
A. The boatswain of the Jacksonville came to the room where I was laying down and asked me to go down and see the chief officer, there was a man wanted on board, a carpenter or handyman. I should go down and I would see him in the evening. He expected him on board. I went down with him, he paid my fare down on the car, passed the gate at the Shipping Board yard, two watchmen were just relieving one another at 6 o'clock, and one stayed a little over and the boatswain asked him if we could pass through. He answered yes. He asked what I wanted to go aboard for. He told him to see the chief officer for to get a job; he wanted a man in the morning.
Q. Go ahead with the story. I did not ask you to tell it, but so long as you started it so well, unless counsel objects, proceed and tell what happened up to the time you got hurt.
A. I went on board, up the gangplank of the "West Compo," across the deck, underneath the bridge, the after [fol. 16] part of the bridge on the midship deck or boat deck, went over the rail. There was no opening on the rail. It was an iron pipe railing.

Q. You went through that?

A. No, I stepped over it. There were two pipes. I put my foot on one pipe and went over the top one, over it. I walked down the gangplank on board the Jacksonville. It is easier to go down hill than up hill.

Q. You got down there?

A. Yes, the plank was almost steady when I went down. I seen it hanging in the rope. I did not take much notice. The second officer of the "Jacksonville" was sitting on a chair across the deck.

Q. What day of the week was this?

A. Sunday evening.

Q. What time did you get on the boat?

A. A quarter after seven.

Q. What time?

A. A quarter after six, I mean, in the evening.

Q. Was anybody with you when you went down the gangway?

A. The boatswain went ahead of me.

Q. How far ahead?

A. I judge 4 feet—he must have been all of 12 feet over the gangplank. We were the only ones on the gangplank at the time. The gangplank was 12 feet long, and the inside boat was 8 to 10 feet higher than the outside boat, which made the gangplank steep, so if she was resting on the deck she would have to be——

Q. When you got to the end of the plank what was there there to step on?

A. A wooden box, a grocery box.

Q. How big was it?

A. I judge 8 inches wide, a foot and a half long, and [fol. 17] about the same width, might be more.

Q. Did you say 8 inches?

A. Yes.

Q. Show us what you mean by 8 inches with your hands.

A. About so (indicating).

Q. That looks like 10 inches to me. Was that the heighth of the box or the width?

A. The width.

Q. How high was it on deck?

A. About a foot and a half.

Q. Show us a foot and a half with your hands, show us from the floor where your feet are on that box, show with your hand as high above the floor level as the box came. (Witness did so.)

Mr. Axtell: The floor of the witness box.
Mr. Axtell: That is about 15 inches.

Q. Are you talking of the level of the witness box?
A. From here (indicating).

Q. That height you would say the box was?
A. Yes, sir.
Q. You had no accident getting aboard the ship?
A. No.
Q. What did you do when you got aboard?
A. Crossed the deck, walked forward to the boatswain's room, the boatswain asked the second mate if the chief officer was on board. I understood him to say no. He said, "Come forward and wait a while until he comes on board so you can see him." It was a very hot day. I did not want to stay long. He said, "Wait a while and I will come ashore with you." I stayed there a little over half an hour; it was too hot in his room. I went in there and [fol. 18] could not stay there; it was over 100. Anyhow, in the month of August, the hot sun pouring on the iron decks, and no awnings——
Q. Were any arrangements made about working on the ship this time?
A. Only with the boatswain.
Q. What arrangement did you have with him?
A. He asked me to come aboard and see the chief officer.
Q. When?
A. That evening.
Q. After you got aboard and the chief officer was not there you waited a while?
A. Yes, to see if he would come aboard.
Q. Did he come?
A. No.
Q. Was an arrangement made with him?
A. The boatswain wanted me to stay aboard. I said, "It is too hot to sleep here. I have a hotel, it is nice and cold there, and I could not sleep here, it is too hot, and

furthermore, I have not my working clothes with me, so I could not start without going up in the morning, so I might as well go up there and sleep the night where I paid for the room."

Q. You started for shore?

A. Yes.

Q. Were you alone or with anybody when you started for shore?

A. I went alone.

Q. What time was that?

A. About a quarter to seven, I should judge.

Q. How long were you aboard the ship then?

A. A little over half an hour.

Q. Tell where you went after leaving the boatswain's room.

A. I crossed the well deck forward, walked along the well deck on the starboard side to amidships, went up 14 steps up to the bridge deck, walked along the bridge deck to [fol. 19] where the gangway was, stepped on the gangway, got half ways on it when it started wiggling like this, being steep, and it is harder to go up hill than down hill, the gangway started to wiggle; when I got to the middle I got around the stanchion this arm, it overbalanced me. I held with this arm as long as I could.

Mr. Axtell: Indicating the left arm.

A. (Continuing:) I held there until it broke. I heard it crack, and everything turned black from my eyes; I could not hold any more, I fell backward, my head struck in the rail, and there is nine stitches in the back of the head, the scalp was turned over my face, they pulled it over when I came to St. Luke's, they pulled it over. This jawbone was hanging over here, it was torn loose from both sides here, two holes here from the bolts of the "West Compo," it was bolts like that, rivet heads on the outside, square ones, and when I fell down between it tore this part, and tore my scalp over my face. I was unconscious. I had my senses until I struck the rail.

Q. When did you become conscious?

A. 9 o'clock I heard the nurse, Miss Jones, a Sister in St. Luke's, the doctor asked her what time it is, he is coming to now, and she said 9 o'clock.

Q. What happened then?

A. The doctor told her to give me chloroform or ether, whichever it was, and I heard no more before 10 o'clock; they were boring a hole in my knee-cap and putting some fluid in it.

Mr. Cunningham: I move to strike that out.

The Court: Strike out everything after 9 o'clock.

[fol. 20] Q. In the morning you came to at 10 o'clock?

A. Yes.

Q. What did you find to be your condition then?

A. I was sore all over, pain all over.

Q. Did you have any bandages on you?

A. Bandages all around my head.

Q. Where else did you have bandages?

A. The arm had two boards, and the hand was turned around, the front was on the back, and it was so until I came to Savannah.

Q. They left you over night?

A. It was so badly crossed they could do nothing with it. They put bandages on. They put boards on, and tied it up, and let it grow together, and they broke it afterward. The doctor at Jacksonville, he said he could not break it——

The Court: Strike out what somebody told him.

Q. You say they let it heal up there with your palm of your hand on the outside?

A. Yes.

Q. What hospital was this?

A. St. Luke's, Jacksonville.

Q. Is that a public hospital?

A. Public Health Service.

Q. How long were you in the hospital?

A. One month and 17 days.

Q. What hospital were you taken to?

A. Savannah, Georgia, Public Health Service Hospital.

Q. How long were you there?

A. Two years and a half.

Q. What did they do for you in these two hospitals, what operations or treatment did they give you?

A. Dr. Rogers and Major Miller, they operated on me.

[fol. 21] Q. At which hospital?

A. Savannah Hospital.

Q. That is the second one?

A. That is the first one. The first treatment was St. Luke's, was bandaging it up.

Q. You were there one month and seventeen days?

A. Yes, sir.

Q. Didn't they do any other operations on you?

A. No.

Q. Do anything to your knee?

A. Sewed my head and bored my knee.

Q. What do you mean, bored it?

A. It felt like boring a hole in it, he may have put a syringe in it and take it out, really more than I could see.

Q. Were you conscious or unconscious?

A. It was like a dream to me in bed.

Q. Did he give you gas?

A. No.

Q. Did he put a local pain killer in the knee?

A. Yes.

Q. You could see it?

A. I was laying high with my head, and I could look at it.

Q. He was doing something with instruments?

A. Yes, but he held his hand in front so I could not see it very well.

Q. Were you able to walk at that time?

A. Not for three weeks after, the leg was dead altogether.

Q. Were you able to move the leg?

A. No, it laid dead in the bed.

Q. Did they do anything to your arm at that hospital?

A. Bandaged it up tight.

Q. Did they take those boards off?

A. No.

Q. Left them on all the time—were you given any injections of morphine, or anything like that?

A. No, I would not take it. They may have given me first when I came to, that is more than I can say, but after I had my senses I did not take it. I never accepted; for an operation sometimes I had to take it.

[fol. 22] Q. Did you have pain during that time?

A. Yes.

Q. Where did you have pain?

A. The back of the head, down here (indicating); I could not breathe, my mouth was full of blood, so I was choking.

Q. How did you eat?

A. I did not eat anything.

Q. Didn't they give you liquid?

A. The first thing three days after they had a straw put in my mouth with beat-up raw eggs and milk, and poured it into me.

Q. Did you suck it through?

A. Very little.

Q. Did they pour it in?

A. They poured the glass running in high enough. I was sucking all I could to get it in.

Q. How long did that last?

A. Lasted three weeks.

Q. You finally were taken to Savannah, Georgia?

A. Yes.

Q. How did you get there?

A. By myself, with my arm in the sling.

Q. Were you able to move the leg then?

A. Yes, the leg came through three weeks after. I could walk on it a little and it got stronger and stronger every day, and I limped along the best I could.

Q. You left the hospital and went——

A. No, they said I had to be transferred. The Major said the quicker the operation would be performed the better it would be for me.

Q. You were in the marine ward at St. Luke's Hospital?

A. Yes, sir.

Q. Used for sailors?

A. Yes, sir.

[fol. 23] Q. As a seaman you had a discharge from an American vessel within seven days?

A. From the steamship "Dempsey."

Q. An American ship?

A. Yes.

Q. And as a seaman from that ship with that discharge do you know whether you were entitled to receive treatment at a marine hospital?

Mr. Cunningham: I object as incompetent, irrelevant and immaterial.

The Court: What has it to do with this case? He did not have a discharge from this ship. What do we care about it?

Mr. Axtell: My friend said he was not entitled to receive treatment at a hospital, as though that was part of his case.

The Court: He said he was not entitled to receive treatment because he was not connected with this ship.

Mr. Cunningham: He was not connected with any ship at the time of the accident.

The Court: What are we concerned about that for?

Mr. Cunningham: Simply he has received his maintenance and cure at the expense of the Government, and was not entitled to that.

The Court: He was not a sailor. You are not asking for maintenance and cure.

Mr. Axtell: I objected to his making the remark in the opening. He said this man was not entitled to go to a marine hospital.

The Court: I do not see what it has to do with it. You are not asking for maintenance and cure in this case. You are suing for indemnity, for damages he received, and [fol. 24] that is all he is suing for. What is the difference whether he is entitled to hospital care; you do not contend he is entitled to maintenance and cure under any conditions?

Mr. Axtell: No.

The Court: Then what difference does it make?

Q. You got to Savannah, Georgia?

A. Yes, sir.

Q. And entered that hospial?

A. Yes.

Q. And that was a United States Marine Hospital?

A. Yes.

Q. How did you get in there?

A. On the same permit as I had from the S. S. "Dempsey."

Q. In other words, you get it on your discharge from another American ship?

A. Yes, sir.

Q. Tell the jury what happened in this hospital as to treatment, operation, and so forth?

A. I had three operations there.

Q. Tell us about them.

A. The bones grew together. I waited one month and eleven days before they operated on me.

Q. What did they do then?

A. Operated on me.

Q. On which arm?

A. On this arm, the left arm, broke it again, and turned the hand around.

Q. How was your hand before that?

A. I do not remember. It was down like that (illustrating). It is a little yet; I cannot turn it yet without turning the body.

Q. Which way was it turned before; use the other hand to show us? A. This way (indicating).

[fol. 25] Q. With the thumb down or to your back?

A. Yes.

Q. Could you use the hand in the shape it was at that time?

A. No, I could not move the fingers or anything.

Q. They put you under ether when they had that operation?

A. Yes, the first time I was three and a half hours under ether, and the second time three hours.

Q. Did they operate twice on the same arm?

A. Yes, the scars show here.

Q. You have a scar?

A. Yes, sir.

Q. Will you take off your coat and roll up your sleeve?

(The witness did so and showed the scar on his arm.)

Q. Double your arm as much as you can.

(Witness did so.)

Q. Straighten it out as much as you can.

(Witness did so.)

Q. Now turn it around as much as you can.

(Witness did so.)

Q. Where is the scar you were telling about?

(Witness shows the scar.)

Mr. Axtell: It runs along from the wrist to the elbow.

A. And the other one goes there.

Q. What was the third operation at the hospital?

A. The fingers were grown fast together. They had me under ether three times to break them loose. Every time they grew together, the fingers grew stiff, and I could not move them at all.

Q. You mean your fingers became stiffened?

A. The joints in the fingers became stiff.

Q. How are your fingers now?

A. I can move them a little. I have not got power in them.

[fol. 26] Q. Can you double your fist up like I do mine?

A. No.

Q. Is that as little as you can double it up?

A. That is all.

Mr. Axtell: May it appear on the record the plaintiff cannot close his hand more than to have the fingers touch the thumb?

Q. Was any operation done to your jaw, do you know?

A. Sewed together, three stitches put in under the chin here.

Q. That was done in the first hospital?

A. Yes, the Major at St. Luke's bandaged it up and put it in place at the ears; and the nose was torn; and I think there was one stitch put in the nose.

Q. What other treatment did you receive at the hospital?

A. After I was there a year and a half I got stomach trouble and I got some medicine for the stomach; that is all the treatment I received, and I got well after it. I did not get well with their medicine, but I asked them for other medicine, which they refused me, and they gave me five grains of other medicine at last, and I got well. I got 56 inches around the waist, and everything turned black from my eyes.

Q. Did you get massaging or electric treatment of the arm?

A. Yes, I was going to Dr. Goren three months twice a week, and he made them operate on me again; he told them the arm was not grown together.

Q. He means the bones were not grown together?

A. Yes, sir.

Q. Who is Dr. Goren?

A. Osteopath.

Q. Savannah?

A. Yes, sir.

[fol. 27] Q. He was an outside practitioner?

A. Yes, sir.

Q. How long did you go to him?

A. Three months he was rubbing my arm.

Q. Gave you massages?

A. Yes.

Q. Did that improve you?

A. The shoulder blades were torn out of place, and he got them in place so I could lift the arm. I could not get them from the side, it was like that.

Q. When you left the hospital, what did you do? Where did you go when you left the hospital?

A. At Savannah?

Q. Yes.

A. To Baltimore No. 1.

Q. You were in the hospital there?

A. Yes, sir.

Q. How long were you there?

A. Five and a half months.

Q. What did they do for you there?

A. Did not do much for me.

Q. Altogether you were in hospitals how long?

A. Between two and three years; I do not remember.

Q. After you left the hospital at Baltimore where did you go?

A. Sailors' Snug Harbor.

Q. How long did you stay there?

A. Five months and a half.

Q. And then you left there to do what?

A. It was spring of the year and I felt a little better, and they needed a watchman at the Iron Works, Brooklyn.

Q. You got a job as watchman?

A. Yes, sir.

Q. Where was that yard at that time?

A. Pioneer and Emery Streets.

Q. How long did you have that job?

A. Ten months.

Q. Why did you leave that job?

A. It got in the hands of receivers and I got transferred. [fol. 28] When I got through there they put me on the dredge "Hurricane"; Moore & McCormick had a part in it; they were ship brokers for the "Hurricane"; they told me I could go there and stay there and live there.

Q. How long have you been there?

A. Two years in April.

Q. You have been in charge of the "Hurricane" all that time?

A. Been alone there most of the time. For one month we had a crew on board. She had been undergoing repairs, over $60,000 spent on her.

Mr. Cunningham: I object to that.

The Court: Strike it out.

Q. Is she a large boat?

Mr. Cunningham: I object.

The Court: What boat?

Mr. Axtell: The "Hurricane" he is working on.

The Court: What do we care about that?

Mr. Axtell: To show his general work and what he is able to do.

The Court: What difference does it make about the size of the vessel? Keep to the issue.

Q. What are your duties on the boat; what do you do? (No answer.)

By the Court:

Q. What work are you doing?

A. Now or before?

[fol. 29] By Mr. Axtell:

Q. Now.

A. Watchman.

Q. Do you have to do any physical work or labor?

A. No, I ain't able to.

Q. How is your leg now?

A. A little stronger than it was.

Q. What, if anything is wrong with your leg or knee now?

A. It bends backward about 2 inches more than it should.

Q. In other words, your knee is more double-jointed than it ought to be?

A. Yes, it bends to the side too.

Q. Did you have any treatment for that knee while in the hospital, aside from this one operation you have been telling about?

A. No.

Q. Was there anything wrong with the knee before that?

A. Yes, I have been having it broke once before.

Q. You had had it broken once before?

A. Yes, the knee.

Q. The same knee?

A. Yes, sir.

Q. What was its condition after the first accident and before the second accident?

A. Almost as strong as it was before I had it broke the first time.

Q. The first accident had not impaired its usefulness very much?

A. No.

Q. How does it compare now with the way it was before the accident?

A. Getting a little stronger all the time, the leg.

Q. Now as to your left arm, to what extent are you able to use that?

A. None at all.

Q. Have you any grip in your left hand?

A. No.

Q. Can you close it?

A. No.

[fol. 30] Q. Have you had any pain at all since you left the hospital?

A. Yes.

Q. Where?

A. In the arm and in the head.

Q. How much pain have you had in your head?

A. Sometimes I do not sleep nothing for three or four nights.

Q. Do you have as much pain now as you used to have?

A. No, it is a little better.

Q. You have been gradually getting better in that respect?

A. Yes, getting a little better right along.

Q. Do you feel better now than you did a year ago?

A. Yes, sir.

Q. Did you feel better a year ago than you did the year before that?

A. Yes, I got a little better right along.

Q. What year was it you left Sailors' Snug Harbor at Staten Island?

A. 1923, April 3rd.

Q. And you have been employed as watchman steadily ever since then?

A. With the same people, got transferred from one to the other.

Q. You have been steadily employed ever since then as watchman?

A. Yes, sir.

Q. How steadily had you been employed before you got hurt on this ship, the "Jacksonville"?

A. I will have to go too far back.

Q. As far as you went.

A. During the war I was discharged from one ship to another, not over ten days ashore.

Q. Have you worked steadily all your life?

A. Yes, except when I have been hurt and been in the hospital a couple of times.

Q. Did you ever have any other accident to your left arm?

A. I had an accident with the right hand and arm in 1906, and I was in the hospital six months with it.

[fol. 31] Q. Did you ever have anything with your left arm before this?

A. No.

Q. Was your left arm in good shape before this accident?
A. It was not hurt no time.
Q. Did you have an accident or injury to your head before this accident on the "Jacksonville"?
A. No.
Q. Had you had an injury to your jaw before the accident on the "Jacksonville"?
A. No.
Q. The injury to your jaw and head and your left arm and hand, is that all that happened to you on the "Jacksonville"?
A. Left arm, jaw, top of the head, arm, and the knee-cap.
Q. These X-rays show some injury to your nose.
A. I had that broke before.
Q. That was something else?
A. Yes.
Q. You had that before?
A. Yes, sir; it tore it a little more when I fell here.
Q. It did not break any bones?
A. It did not break any bones.
Q. Do you know how far it was from the deck of the "Jacksonville" down to the water line?
A. Amidships there?
Q. At the point where the gangway was.
A. 13 or 14 feet, I should judge. I did not measure it.
Q. Do you know whether there is a custom in American ships as to the hiring of men or the procuring of men for employment in the deck department, such as deckhands or carpenters by the boatswain of a ship?

Mr. Cunningham: Objected to on the ground this man is not competent to testify as to customs on ships.
The Court: I do not know whether he is qualified or not, [fol. 32] if you want to cross examine him.
Mr. Cunningham: I won't interrupt the examination.

Q. Did you hear the question?
A. Yes, sir.
Q. What is your answer to the question? Is there a custom?
A. It is a custom.

The Court: Do you understand what he means?
The Witness: Yes.

By the Court:

Q. He did not mean if it is done once in a while, or one person does it, or two or three people do it; he wants to know if there is an established custom, if it is a regular thing on American ships for the boatswain to hire men; the regular thing?

A. The chief officer, if he likes the boatswain, he generally lets him do it, get his own men.

By Mr. Axtell:

Q. How many ships have you been on?

A. I could not count half of them, or remember it.

Q. Tell us about how many.

Mr. Cunningham: I object to this on the ground that it is incompetent, irrelevant and immaterial, and does not run to the question. The question is how many ships he had been boatswain on to know the custom. He already testified he does not know anything about that.

The Court: I will let him testify how many ships he had been on.

[fol. 33] Q. How many ships have you been on?

A. I could not remember it now. I have been going to sea since 1889.

By the Court:

Q. How many times were you hired by the boatswain, and how many times——

A. In olden times we shipped in the commissary; schooners we shipped at the shipping master; in steamers at times the men go aboard and the boatswain hires them.

By Mr. Axtell:

Q. Do you know from your experience since 1889 at sea—you testified you have been ordinary seaman, able seaman, carpenter and boatswain constantly, and you have been on lots of ships; do you know whether there is a general custom on the part of boatswains to procure men for the deck department and take them to the mate for his approval to be hired?

A. That is a hard thing for me to answer any other way than the way I done so.

Q. Is your answer yes or no? Do you know whether there is such a custom?

A. Yes.

Q. What is the custom with regard to the boatswain getting men or procuring men for the mate?

A. The boatswain used to get them and take them to the chief officer and he hires them.

Q. What are the duties of boatswain on a ship?

A. To run the men.

Q. In what department?

A. In the deck department, with whatever is to be performed in ship's duties.

[fol. 34] Q. Is he a sort of foreman over the deck department men?

A. Yes.

Q. He carries out the orders of the first mate?

A. Yes, sir.

Q. Do you know of your knowledge whether the chief mate is known as the executive officer of a merchant ship?

A. Yes, sir.

Q. Do you know what I mean by executive officer?

A. In charge of everything.

The Court: Nobody raises any question about the chief officer being executive?

Mr. Cunningham: No.

The Court: They concede the chief mate is the executive officer?

Mr. Cunningham: Yes.

Mr. Axtell: And the boatswain is in charge of the deck department and carries out the orders?

Mr. Cunningham: I concede the boatswain is foreman, like the top sergeant is to the lieutenant.

Q. Going back to the scene of this accident, will you take this model and show us first where was the box when you came on the ship, the box you speak of?

A. Right here between the guy——

Q. If I make a mark here something like that, would that show in a general way where it was?

A. It was not as far this way as this way.

Q. You are not as far this way. I made a mark here. I will mark it A.

A. It is about the middle of the boat.

Q. About here?

A. Yes, sir.

Q. Mark that B, and it reached out this way how far?

A. Up to this guy.

[fol. 35] Q. Then these lines here which we will mark C—then the line B to C would indicate where the box came; is that right?

Mr. Cunningham: Let us have the testimony from the witness rather than you tell him.

The Court: Yes, let the witness tell. Ask questions and do not suggest answers.

Q. Will you take the pencil and show the jury where the box was on the deck of the "Jacksonville", make a square there? (Witness did so.)

Q. Now you have made a rectangle, and you say that indicates the position where the box was as you saw it when you came aboard?

A. As I stepped on it.

Q. Were the ends of the planks of the gangway resting on the box?

A. No, they might have been before, but they were lifted up about 4 feet above the box.

Q. How far above?

A. 4 inches. 4 feet, I say.

Q. Show us what is 4 inches, show with your fingers.

A. About that far (indicating).

Mr. Axtell: He is measuring about 4 inches, I should say, or 4½.

Q. Show us on the ruler—show us with your hand again what you said was the distance.

(The witness did so.)

Mr. Axtell: It shows 4⅛ or 4¼ inches.

Q. Just take the model and use this pencil if you wish, and show how you proceeded up the plank, and just what [fol. 36] happened to you, and how you got your arm caught.

A. I stepped on the box with one foot. I climbed up the ladder here, 12 steps—

Q. There was a ladder to get to the midship deck?

A. Yes, from the forward deck. I walked along the starboard side and climed up the iron ladder to the midship deck. There were rails on the side to take hold of, both sides. I walked up there, walked to this box, stepped on the box, got up this gangway to here, then it started wiggling like this.

Q. Mark a mark at the point where you got to.

A. Where the stanchion is amidships.

Q. Opposite the middle stanchion?

A. Yes.

Mr. Axtell: He made a mark.

Q. What happened?

A. I was standing there, and while holding on I tried to get up. It is harder to get up hill than down hill always. I tried to get up, it started wiggling more and more, so I got my one hand here on the rope, and when I seen I was going to fall I put that arm around the stanchion and thought I could hold myself there, but the arm broke.

Q. Where was your body when the arm broke?

A. In between the stanchion, like this.

Q. You mean your body was hanging off the planks?

A. My body went between here, and the arm went around the stanchion.

Q. What do you mean by here, body went in below there?

A. Below there.

Q. Between the middle stanchion and the "Jacksonville"?

A. Between the middle stanchion and the gangway, went in between the two ships. I was hanging about between the two ships.

[fol. 37] Q. Assuming this upright was the stanchion, show the jury how you had your arm?

A. Around the stanchion like this, and my body fell in between.

Q. The back of your hand was against the plank?

A. Yes.

Q. Your hand like this, holding yourself here?

A. Yes.

Q. What part of the stanchion did your arm come against?

A. The middle of the lower part.

Q. Between the elbow and wrist?

A. Yes.

Q. The stanchion was in here somewhere?

A. Yes.

Q. And your hand was on the planking?

A. Yes.

Q. And your body was hanging over the side then off the planks?

A. Yes.

Q. What did you weigh at that time?

A. I weighed about 186.

Q. What do you weigh now?

A. 194. I was down to 154.

Q. Do you know how long you were hanging there before you fell?

A. Not very long.

Q. Did you make any outcry?

A. Yes.

Q. Did anybody come?

A. There were only two men on deck; the second mate was sitting on the other side. I did not see him when I came ashore; the seaman was forward I was talking to, the only person I seen on the "Jacksonville". The boatswain put his coat on to come ashore after me.

Q. Was he with you when you fell?

A. No, he was on the well deck, and the other seaman was forward at the break of the forecastlehead, the only two people I saw there when I fell.

[fol. 38] Mr. Axtell: Will counsel produce the plans of the "Jacksonville" we asked for?

Mr. Cunningham: In view of the fact you just issued the subpoena, the only plan I can produce is here.

Q. Assuming this is the plan of the ship (most any ship would do, I suppose). Look at this a minute, Mr. Johnson. Which is the starboard side of this ship? Take this deck that shows the hatches.

A. This is the stern and this is the bow.

Q. This is the bow toward you?

A. Yes, sir.

Q. Now tell us where was the boatswain's room?
A. On the port side forward right there.

Mr. Axtell: I guess it is marked boatswain's room.

Q. We will put an "A" there. Leaving that part of the ship, where did you go?
A. I came aboard like this, went up there.
Q. How did you come aboard the ship? Make a mark showing how you came aboard.
A. That is the bridge deck, came over here, walked along here up to here.
Q. Step down here a moment. (Witness did so.)
Q. Now just show us where the ladder was you came aboard.
A. The gangway was just about here.

Mr. Axtell: Make a mark there.

Q. Are you ordinarily left-handed or right-handed?
A. Right-handed.
[fol. 39] Q. Mark this G. That is where the gangway was here.
A. Yes, came over the deck of the "Jacksonville" about to here.
Q. Now take your pencil and show us where you proceeded after you got to the deck of the "Jacksonville" from "G", where did you go? Show us the route. You got on the "Jacksonville" here. Can you see all right?
A. Yes, I went across the deck here.
Q. Draw a line.
A. Down the ladder here, up here, stayed there five minutes.
Q. Stayed there. That point we will mark "B." Where did you go then?
A. It was too warm, there is an alleyway here, and they had a bench right here.
Q. A bench right here. We will make a little thing to look like a bench and mark that "C."
A. I was talking to him there for a while.
Mr. Cunningham: Talking to whom?
The Witness: The sailor on deck, the only man I see. He wanted me to go in the forecastle, the sailor's quarters

are here, and in the morning see the mate. I walked across the deck; after I crossed the deck I went back to the boatswain, said "I am going ashore," so I walked over to him, and I walked across here and along the deck.

Q. Make a mark. Came back to point "G," on this line?

A. Yes.

Q. It leads from point B to G on the starboard side of the boat, is that right?

A. Yes.

Q. Now, then, how was the ship "West Compo" lying?

A. The same ship, but the stern is not right.

[fol. 40] Q. You mean taking this other drawing of the lower deck of the "Jacksonville," if you put the stern at this end, that would be the way she would be?

A. Yes, sir.

Q. Draw a line to indicate, that was the stern, this was the bow, and this would be the "West Compo"?

A. Yes.

Q. What was the space or distance between these two vessels from one ship to the other?

A. Down below, 8 inches apart, down below, about 2 feet up where the gangway was, 2 to 3 feet.

Mr. Axtell: I offer this drawing with the marks put on it in evidence.

Mr. Cunningham: No objection.

(Marked Plaintiff's Exhibit 1 in evidence.)

Q. Have you always worn glasses?

A. No.

Q. When did you begin wearing glasses?

A. Since I was hurt.

Q. Have you made a complaint in this case as to the condition of your eyes?

A. No.

Q. Has it anything to do with this accident?

A. That is more than I can say. They got weak all the time after. I think it has something to do with the head.

Q. Did Dr. Power examine you once or twice?

A. Yes.

Q. How many times has he examined you?

A. Once, I think.

Q. Do you remember X-rays being made of you?
A. Yes, sir.
Q. Where?
A. In West Street.
Q. Did Dr. Power make X-rays of you?
A. Two, I think.
[fol. 41] Q. Did you have some made at the Central X-ray Laboratory, Times Square?
A. Yes, sir.
Q. That was some time ago, wasn't it?
A. Three years ago.
Q. These made by Dr. Power were made more recently?
A. Yes.

Mr. Axtell: Your witness. I should like to call the X-ray man and identify the X-rays and let him get back. May I withdraw the witness?
The Court: If there is no objection.
Mr. Cunningham: No objection.

(Witness withdrawn.)

Henry F. Bronstein, called as a witness on behalf of the plaintiff, being duly sworn, testified as follows:

Direct examination.

By Mr. Axtell:

Q. You are an X-ray technician?
A. Yes.
Q. How long are you at that work?
A. 15 years.
Q. You have had hospital experience?
A. At Roosevelt, Lutheran, Manhattan State, United States Army, France.
Q. How many years in Roosevelt?
A. Six years. Lutheran over two years——

Qualifications conceded.

Q. You made these X-rays, six or seven of them, of this man John Johnson, of various parts of his body, chest, [fol. 42] head, nose, elbow, arm, leg, knee?

A. Yes, sir.
Q. I show you a report——
A. I have a copy.
Q. Those plates were made what date?
A. October 10, 1923.
Q. Did you print them and develop them?
A. Yes, sir.
Q. You know they are the pictures of this man John Johnson who is sitting over here?
A. Yes, sir.
Mr. Axtell: I offer them in evidence.

Cross-examination.

By Mr. Cunningham:

Q. You have identifying marks on them which identify them definitely with Johnson?
A. Yes, sir.
Q. You have just examined those photographs for the purpose of seeing those identifying marks?
A. Yes.
Mr. Axtell: I offer them in evidence.

(Marked Plaintiff's Exhibits 2, 3, 4, 5, 6, 7 and 8 in evidence.)
(Witness excused.)

JOHN JOHNSON resumed the stand.

Cross-examination.

By Mr. Cunningham:

Q. Mr. Johnson, did you see the chief officer on board the ship that afternoon after you got on board the "Jacksonville"?
A. No, sir.
[fol. 43] Q. Did you talk to the chief officer of the ship ever at any time?
A. Yes, three weeks previous to that when the ship came in.

Q. Three weeks previous to this?

A. Yes, sir.

Q. What was that chief officer's name?

A. That I do not remember.

Q. Then you do not know the chief officer whom you say you talked to three weeks before? Was'nt the chief officer on the ship on the day you met with your accident?

A. No.

Q. You do not know the chief officer who was the chief officer of the ship on the day you got hurt was Wayman, who joined the ship three or four days prior to your accident?

A. No.

Q. You did not talk to the second officer that afternoon when you came aboard the ship with Carlson, did you?

A. No, Mr. Carlson spoke to him.

Q. As a matter of fact, the only person you did talk to on the "Jacksonville" that afternoon that had any job higher than that of able seaman was boatswain Carlson?

A. Yes, and one seaman.

Q. I say, anything higher than the boatswain. You say the boatswain came to Sam's Hotel in Jacksonville about 4 o'clock that afternoon and asked you to come on board the ship to look for a job?

A. Yes, sir.

Q. How far from Jacksonville is Sam's Hotel?

A. About 4 miles.

Q. How did you get to the wharf?

A. Trolley car.

Q. What time did you say you got there?

A. A little after 6. Two watchmen were just relieving one another.

Q. You say you got there a little after six?

A. Yes, sir.

[fol. 44] Q. You could not be mistaken about the time you got there?

A. The only time I could tell—I had a watch on me, but I seen two watchmen relieving one another, which is usually 6 o'clock.

Q. You guessed it was 6 o'clock?

A. Yes, I was there——

Q. Never mind making a speech each time, Mr. Johnson. Just answer my question. You estimate it was about 6 o'clock?

A. Yes, sir.

Q. Were the men still working on board the ship when you got aboard?

A. Nobody working there.

Q. You are quite sure of that?

A. Yes, sir.

Q. And you are also sure you came on board the ship with Carlson, the boatswain?

A. Yes, sir.

Q. There could not be any mistake about that?

A. No.

Q. You are positive about it?

A. Yes, sir.

Q. And Carlson came on board the ship "West Compo" ahead of you and went down this gangplank which you described on to the "Jacksonville," some 12 or 14 feet ahead of you?

A. Yes, sir, 12.

Q. Did the gangplank end which was on the "West Compo" rest on the deck of the "West Compo"?

A. On the rail, about 4 inches higher, the rail, which was about 4 inches higher.

Q. What kind of rail was it on the "West Compo"?

A. Steel rail.

Q. Was it one of those ordinary gas pipe rails about that size?

A. A pipe rail up about——

Q. Pipe rail?

A. Yes, sir.

Q. You say that the gangplank rested on the rail?

A. On the rail of the ship.

Q. The rail of the ship?

A. Yes, sir.

[fol. 45] Q. And it did not rest on the deck of the "West Compo"?

A. The deck is 4 inches below the rail.

Q. Was there an opening in this rail?

A. No, sir.

Q. So you had to climb over the pipe rail and then step down on this gangway?

A. Yes, sir.

Q. And this gangway was at an angle of about how many degrees?

A. One ship being 8 feet higher than the other and the gangway 12 feet long, how much angle would there be?

Q. I am asking you. You are not asking me.

A. I am trying to figure it by myself.

Q. Give us an idea with your hand.

A. A little bit more than the box shows there.

Q. A little bit steeper than that?

A. Yes, sir.

Q. How high was the rail you had to climb over so you could step down on the "West Compo" end of the gangplank?

A. About 3 feet, I judge.

Q. When you got to the "Jacksonville" end of it it was hung up in the air by a sort of sling?

A. Yes, sir.

Q. In this style here?

A. As near as I can remember, in that manner.

Q. That is as you can remember?

A. Yes, sir.

Q. Is your mind perfectly clear on everything that happened that afternoon?

A. Yes, sir.

Q. You have not forgotten anything at all?

A. No.

Q. The sudden shock, fall and striking your head, did not drive any of the facts out of your mind at all?

A. At times I feel pale.

Q. The shock and fall and the bump you hit your head and the injury to your scalp did not drive any of the facts about what happened that afternoon out of your mind?

A. It does at times.

[fol. 46] Q. You remember them all clearly today?

A. Yes, I do. I have no pain in my head at the present time.

Q. You remember everything that happened clearly today?

A. Yes.

Q. What held the other side of the gangplank?

A. Nothing.

Q. It was like that?

A. It was wiggling. There should be guys there set to hold them. They might have been there and they took them off.

Q. Was there anything on the right hand side of this gangplank as I face you, any rope which attached to anything over here on the ship?

A. No.

Mr. Axtell: Indicating to the right as you face the "Jacksonville," to the speaker's right.

Mr. Cunningham: My right.

Q. In other words, your testimony is, the only thing that held steady the "Jacksonville" end of the gangplank was a sling which was tied to a davit?

A. Not to a davit, to the smokestack guy. The davit was hanging loose. It might have been tied there before. It was turned around to the gangway and nothing on it whatsoever.

Q. So there was a stay from the smokestack?

A. Yes, sir.

Q. And this rope was tied on to that?

A. Yes, sir.

Q. And that loop came around the lower end of the gangplank?

A. Yes.

Q. And that is the way in which it held?

A. That is the way I seen it.

Q. That is the way it was then if you saw it that way, wasn't it?

A. Yes, sir.

[fol. 47] Q. Will you tell me just where the stanchion was that you say you got your arm around and broken?

A. Right there. It is marked with lead pencil.

Mr. Axtell: Indicating about the middle of the gangplank.

The Witness: A little toward the lower end.

Q. What was that stanchion made of?

A. Steel.

Q. Did one end of it fit down into the gangplank?

A. Yes, there was a big hole and it was wiggling, it was loose.

Q. There is not any doubt in your mind at all there was a stanchion there?

A. The stanchion was there all right.

Q. You could not be mistaken about that, could you?

A. No.

Q. You did not have any trouble going down the gangplank that afternoon after Carlson went ahead of you did you?

A. No.

Q. Your trouble came when you came up the gangplank some time later?

A. Yes, half an hour later.

Q. What had you and Carlson been doing at Sam's Hotel?

A. Carlson was not at Sam's Hotel any more than a quarter of an hour.

Q. And you came down together?

A. Yes, sir.

Q. And after you got on board the ship having come down that gangplank, you went from there immediately to the boatswain's room?

A. Yes, sir.

Q. Did the boatswain have a room-mate?

A. Yes, but he was not there at that time.

[fol. 48] Q. What do you mean, he was not there?

A. He was not in the room. I seen him nowheres.

Q. You seen him nowhere?

A. No.

Q. Didn't you see him on the deck as you came along after getting down from that deck to the well deck?

A. No. Nobody there. A sailor was there.

Q. Didn't, as a matter of fact, Carlson introduce you to the carpenter?

A. Yes, three weeks ahead of that, which he spoke about in Jacksonville.

Q. Didn't Carlson call Stewart's attention to you that afternoon on the well deck?

A. Three weeks ahead of that.

Q. Answer yes or no.

A. No.

Q. And you did not see Mr. Stewart on the well deck that afternoon?

A. No.

Q. Did you see Mr. Stewart all that afternoon?

A. No, sir.

Q. How long were you in the boatswain's room?

A. About five minutes.

Q. Didn't you say something earlier in your examination about being there 15 minutes?

A. Outside of the door, standing at the door.

Q. When you were in the boatswain's room was the door open or closed?

A. Open.

Q. All the time?

A. Yes, sir.

Q. Was the boatswain in there with you?

A. Yes, sir.

Q. You had known the boatswain quite some time?

A. Yes, sir.

Q. Carlson and you were quite old friends?

A. No, he boarded in Sam's Hotel two or three times while I was there.

Q. You had known him quite a while?

[fol. 49] A. Six months or so, maybe eight months, seen him two or three times before.

Q. How large is the boatswain's room?

A. That I could not say exactly. It is not a very big room, two beds in it.

Q. It is the room which the carpenter and the boatswain use?

A. Yes, sir.

Q. And it is a room about 8 feet by 5 or 6, isn't that right?

A. Yes, all of that if not more.

Q. Did the carpenter come there to the room while you and the boatswain were in there?

A. No.

Q. The door was not closed any time?

A. No.

Q. Did you have any drinks before you came on board?
A. I had a bottle of near beer the whole day.
Q. You had a bottle of near beer during the entire day?
A. Yes.
Q. Did you have anything to drink after you got aboard the ship?
A. No.
Q. Nothing at all?
A. No.
Q. Did not have anything to drink in the boatswain's room?
A. No. Three weeks before I had a drink——
Q. I am asking you today. Did you have anything to drink in the boatswain's room that afternoon?
A. No.
Q. Had the boatswain anything to drink?
A. No.
Q. Did the boatswain have anything in his room that afternoon?
A. I seen none.
Q. He did not give you any?
A. No.
Q. Did you ever tell anybody you got some in that room?
A. No, sir.
Q. You are sure of that?
A. Not at that time.
[fol. 50] Q. Did you some other time?
A. Yes, sir.
Q. When?
A. Three weeks ahead of it I had one drink.
Q. Listen, Mr. Johnson. I am talking about the time you got hurt, and from that day to this. Never mind about three weeks before that. Did you ever tell anyone that you had anything to drink in that room that afternoon?
A. No.
Q. You are sure of that?
A. Yes, sir.
Q. And you are sure you had not anything to drink beyond a bottle of near beer that day?
A. Yes, sir.
Q. What time did you say you got on board the ship?
A. Some minutes after six, four or five minutes.

Q. What time do you think it was you left the ship?

A. About a quarter to seven.

Q. So you were there, according to your statement, about perhaps three-quarters of an hour, or maybe 40 minutes?

A. A little over half an hour.

Q. If you left there a quarter to seven you got on board a quarter after six, didn't you?

A. Yes, sir.

Q. And when you found the mate was not there, or the chief officer, you stayed on board upwards of half an hour after that?

A. Yes, sir.

Q. Then you decided to leave?

A. Yes.

Q. Were you in the boatswain's room when you decided to leave the ship?

A. No.

Q. Do you leave where you were accompanied by the boatswain?

A. The boatswain stayed in the room, and I stood and spoke with the sailor sitting there alone. It was too warm in the room. There was a little air in the alleyway there, and I went and stood there.

[fol. 51] Q. And then you went on your way alone?

A. Yes, sir.

Q. Went along this amidship deck or well deck until you came to the ladder or stairway leading up to the boat deck?

A. Yes, sir.

Q. And crossed the ship to where the gangplank was?

A. I crossed the ship at the break of the forecastlehead.

Q. So you crossed the ship at the after well deck?

A. On the forward well deck.

Q. And went up the other side of the ship and got up to the boat deck by means of that ladder?

A. Yes, sir.

Q. Then you stepped up on the gangway, which you described as swinging, suspended in this manner?

A. Yes, sir.

Q. You had not seen any officer of the ship all that time?

A. Only when I came aboard.

Q. You had not seen any officer of the ship to speak to all that time?

A. No.

Q. You did not see any officer on board the ship?

A. No.

Q. And had not stated your business to anybody on the ship at all?

A. No.

Q. Why did you go on the ship?

A. To look for employment.

Q. You went on board looking for a job?

A. Yes, sir.

Q. And the boatswain was the man suggested to you to come on board and look for a job?

A. Come on board.

Q. You answer my questions, answer yes or no. The boatswain was the man who asked you to come aboard and look for a job?

A. Yes.

Q. And you say the boatswain wanted you to come on [fol. 52] and look for a job as carpenter?

A. Yes.

Q. Don't you know they had a carpenter on board then?

A. Yes, sir.

Q. Then you knew the job of carpenter was not vacant?

A. He had been ashore three days.

Q. The carpenter had been ashore three days?

A. Yes.

Q. What was the carpenter's name?

A. Stephen—Steve.

Q. Wasn't it Stewart?

A. Some name like that.

Q. You do not happen to see him in the room here anywhere?

A. No.

Q. Mr. Stewart, would you mind standing up? Does this man look like the man you say had been ashore three days?

A. No.

Q. Don't you know that was the carpenter of the "Jacksonville" at the time, Mr. Johnson?

A. No, I could not see him from here.

Q. Come up closer, Mr. Stewart, where you can be seen.

A. My eyes are bad, I could not see so far. I seen that man before, yes.

Q. He was the carpenter, wasn't he?

A. Yes, sir.

Q. The last time you saw him was in the office of the United States District Attorney in Jacksonville, when the deposition was taken of his testimony, August 4, 1926?

A. Yes, sir.

Q. You had a talk with him that afternoon after he got through giving his testimony, didn't you out in the hall?

A. Yes, he told me I should have seen him before.

Q. You did have a talk with him after he had given his testimony?

A. Yes, sir.

Q. Now, you saw that man around Jacksonville for three [fol. 53] days before Carlson came looking for you?

A. I did not see him. I heard them say so.

Q. You heard someone say so?

A. Yes.

Q. You did not know as a matter of fact he was on the ship every day?

A. I could not prove it, no, sir.

Q. Do you know who put the gangway there?

A. No, I was not there when it was put up.

Q. You do not know about that?

A. No.

Q. Did you get a job on board the "Jacksonville" that day?

A. No.

Q. You never had a job on the "Jacksonville"?

A. No.

Q. Never were hired?

A. No.

Q. Never were employed on it?

A. No.

Q. You went on of your own accord, your own business?

A. With the boatswain to hire.

Q. You went on looking for a job?

A. Yes, sir.

Q. You went on to get something for yourself, a job?

A. Yes, sir.

Q. You were out of a job at the time, weren't you?

A. Yes.

Q. How long had you been ashore after leaving the ship just previous to the accident?

A. Six or seven days, something like that.

Q. Do you know whether or not they were repairing the "Jacksonville" at the time that she was lying there outside the "West Compo"?

A. I heard she was in for repairs, machine job.

Q. Machinery repairs?

A. Yes, sir.

Q. Repairs being done to the engines, steering gear and deck winches?

A. I heard so.

Q. You do not know how many men were working on that job?

A. No.

[fol. 54] Q. You do not know how long the job of repairing had been going on?

A. Three or four days.

Q. Before you got hurt?

A. Yes, sir.

Q. Have you any idea how many men were connected with the crew?

A. No. Around 40, I should think.

Q. Did you ever hear of anybody else being hurt on this gangway except you?

A. No.

Q. You did not have any trouble at all coming down the gangway on to the ship, did you?

A. No.

Q. Did you have a hold on the hand rail or rope rail as you came down the gangway to the "Jacksonville"?

A. Yes.

Q. As you came down from the "West Compo," down the gangplank, was the rope rail or hand rail on your left or right?

A. On the left.

Q. So when you went up the gangway to leave the "Jacksonville" to get on to the "West Compo" it was on your right?

A. Yes, sir.

Q. And did you have hold of the rope rail in going up the gangway?

A. Yes, sir.

Q. How high was the "Jacksonville" end of the gangway above the deck of the "Jacksonville"?

A. One foot and a half, possibly two feet.

Q. About 2 feet?

A. Yes, sir.

Q. And you say you stepped upon a box first?

A. Yes, sir.

Q. And then you say you stepped up on to the gangplank?

A. Yes, sir.

Q. And you say the distance between the "Jacksonville" end of the gangplank and this box was about 4 inches or so?

A. Above the box.

Q. And you are sure it did not touch the box at all?

A. Not that I could see.

[fol. 55] Q. You could have seen if it did touch, couldn't you?

A. Yes, I could feel it too. By slacking the ropes it might have touched it, but that is really more than I can say.

Q. Do you know whether it touched the box after you started up the gangplank?

A. No.

Q. You don't know?

A. No.

Q. Didn't you say it did not?

A. I did not feel it.

Q. Let us get this clear. Heretofore I thought you said it did not touch the box, but swung clear in this sling.

A. The box was a little way from the gangplank so it could not touch it nohow.

Q. As a matter of fact, wasn't this box on which the Jacksonville end of the gangplank rested a box about 3 to 3½ feet high and described as a vegetable box?

A. No.

Q. Sure of that?

A. I am quite sure it was not any more than one foot and a half.

Q. When you came on board the ship that night it was daylight, wasn't it?

A. Yes, sir.

Q. As a matter of fact, you came on the ship considerably earlier than you said, didn't you?

A. No.

Q. Didn't you come on at 5 o'clock?

A. No, sir, after six.

Q. You say you left around a quarter to seven?

A. Yes.

Q. Broad daylight still?

A. No, it was sundown, and the lights should have been out, and there was no lights there.

Q. When you say out, you mean they should have been lighted?

A. Yes, sir.

Q. Do I understand a quarter to seven on August 1st [fol. 56] in Jacksonville it is dark?

A. Sundown.

Q. Do I understand you to testify that at a quarter to seven on August 1st in Jacksonville it was dark?

A. After sundown.

Q. Did you understand what I asked you?

A. Yes, sir.

Q. Did I understand you to say at that time, a quarter to seven, it was dark?

A. It was beginning to get dark.

Q. Could you see what you were doing clearly?

A. I was out on deck all the time, I could see a little. I could see fairly good.

Q. You could see a little?

A. Yes, sir.

Q. You could see enough to see the gangplank end on the Jacksonville end did not quite touch the box?

A. Yes, sir.

Q. As a matter of fact, it was still quite light?

A. It was about a quarter to seven.

Q. It was still quite light?

A. It was beginning to get dark.

Q. Were there any cluster lights rigged over the Jacksonville end of the gangplank?

A. No, sir.

Q. None whatever?

A. I seen none.

Q. Were there any there?

A. I could not say if they were there, I could not see any.

Q. Were there any lights rigged over the "West Compo" end of the "Jacksonville"?

A. No, not when I went over. It was quite daylight then, and I could see if they were.

Q. I asked you whether there were lights rigged over the "Jacksonville" end of the gangplank and you said no.

A. No.

Q. And you understood me?

A. Yes, sir.

Q. Were there lights rigged over the "West Compo" or [fol. 57] upper end of the gangplank?

A. I seen none.

Q. Will you say they were not there?

A. No, sir.

Q. Will you say they were not lighted?

A. I seen nothing there in the line of lights.

Q. Then do you testify or tell us they were not lighted at the time?

A. No.

Q. What?

A. They were not lighted.

Q. Now you definitely tell us the lights on the "West Compo" end of the gangplank were not lighted?

A. No.

Q. Was there a wedding party or dinner going on on the "West Compo" that night?

A. I heard of it afterwards. I seen none of them.

Q. Don't you know as a matter of fact because of that the decks of the "West Compo" were brilliantly lighted in honor of the wedding party going on?

A. It might have been after I left there, yes.

Q. But not before?

A. Not before.

Q. Did you ever see the testimony which Mr. Stewart gave down there in Jacksonville in reference to this claim of yours?

A. Yes, sir.

Q. When did you read it over last?

A. I don't remember now.

Q. Have you read it over within the last few days?

A. Some time ago, shortly after I came back from Jacksonville I read it over.

Q. Did you hear the testimony given that day when Mr. Stewart was examined by the United States Attorney down there?

A. Yes, sir.

Q. Were you present when Mr. Andrew was examined also?

A. Yes, sir.

Q. And when Mr. Floyd was examined?

A. Yes.

[fol. 58] Q. And have you read their testimony over since that time?

A. Yes, sir.

Q. Then you know, don't you, that they testified that the Jacksonville end of the gangplank rested upon a vegetable box about 3 feet high?

A. Yes.

Q. But your testimony is it swung in the air?

A. Yes.

Q. How was this hand line which extended along the right hand side of the gangplank as you went by it to the "West Compo"?

A. It was hanging all slack.

Q. How large was this hand line which served as a hand rail?

A. Half an inch.

Q. Half an inch thick?

A. Yes, sir.

Q. About the thickness of your forefinger or mine?

A. Yes, sir.

Q. Where was that fastened on the West Compo?

A. On the rail.

Q. Where was it fastened on the Jacksonville?

A. On to the smokestack guy, which the gangway was hanging on.

Q. It was not fastened to the boat davit?

A. No, the boat davit was 3 feet above that.

Q. You say it came down and went through a stanchion?

A. Yes, sir.

Q. Don't you know as a matter of fact it went directly from the rail of the West Cowpo to the boat davit of the *Jacksonville* without a stanchion?

A. No.

Q. There was not any other means of getting to the *Jacksonville* or ashore but by means of this gangplank?

A. No, sir.

Q. You say it was 12 feet long?

A. Yes.

Q. Composed of how many planks?

A. Two was all I saw. They said it was three.

[Ed. 39] Q. You only saw two?

A. Yes, sir.

Q. How was the gangplank the way you saw it?

A. It was open about an inch in the middle, about 20 inches.

Q. About that wide?

A. Yes.

Q. How was it held together?

A. Small cleats nailed across.

Q. Cleats nailed across which held the two planks steady?

A. Yes.

Q. On bottom or on top?

A. On top.

Q. How far apart were those cleats?

A. About one foot and a half apart.

Q. They served as something for you to get your footing as you went up or down, did they not?

A. Yes, sir.

Q. You would not say there were three planks nailed together there?

A. I only saw two.

Q. You would not say there were not three planks nailed together?

A. No.

Q. So if it should be testified to by those who made the gangplank that there were three, it would be quite likely their testimony would be more accurate than yours?

Mr. Axtell: I object, calling for a conclusion of mind.

The Court: I sustain it. It calls for a conclusion. You can ask if it would change his opinion.

Q. Would it change your opinion if it were testified here by the men who made the gangplank that it consisted of three 12-inch planks held together by cleats, as you described the cleats?

A. As I look at it, I only see two planks there.

[fol. 60] Q. When you came down the gangplank following Mr. Carlson you noticed then that the gangplank swayed?

A. It did not sway much when I came down.

Q. Did you notice then it was held on the Jacksonville end loosely, as you described?

A. No, I did not look at it at all.

Q. When did you notice that?

A. When I came up in the middle of it to go ashore.

Q. When you started to leave the ship you noticed the lower end of the plank was simply in a sort of sling?

A. Yes, I looked what I was holding on and hanging in and I seen the way it was.

Q. All you have told us about how the gangplank was fastened on the Jacksonville end was what you saw when you were holding on to this rope in the act of falling off the gangplank?

A. Yes.

Q. How long did that last, that falling off act of yours?

A. About a minute and a half or two minutes.

Q. Now, do you know how long a minute and a half or two minutes are?

A. It seemed quite long to me at that time.

Q. Will you tell me when I give you the word just when two minutes are up?

(Mr. Cunningham held a watch and the witness indicated when he thought two minutes had expired.)

Mr. Cunningham: That is 25 seconds.

Q. So when you say a minute and a half, it is pretty much of an estimate?

A. I could not hold my breath.

Mr. Axtell: It was 42 seconds.

[fol. 61] Q. So it was not a minute and a half or two minutes you were struggling there trying to prevent yourself from falling off, or anywhere like that, yes or no?

A. Yes, it was about two minutes.

Q. Was anybody near you when you fell?

A. No, sir.

Q. Did anybody see you fall?

A. Yes, one man at the break of the forecastlehead and the boatswain on the break of the bridge seen me as I fell when I was hanging there.

Q. When did you come to after being pulled out of the water?

A. Nine o'clock in the evening.

Q. By that time you had been taken off the ship, I presume, had you not?

A. Yes.

Q. And you waked up in the hospital?

A. Yes.

Q. Did I understand you to say that your scalp was hanging over your chin, over your face?

A. No, it was coming over here.

Q. The scalp was lying over a point on your forehead, folded over to a point above your eyes?

A. It is hard for me to tell. I was half unconscions; I could not say how far it was.

Q. You did say a minute ago when answering Mr. Axtell—what was it you told Mr. Axtell?

A. It was pulled over my face.

Q. Was it that way when you came to in the hospital?

A. It felt that way to me, half unconscious, I could not say for sure.

Q. What I am trying to get at is what was the fact; you told Mr. Axtell your scalp was pulled down half over your face?

A. Yes, sir.

Q. Did you mean it only felt that way?

[fol. 62] A. No, it was that way. I came to and they were pulling it back this way, to sew it up.

Q. Were you bleeding a good deal at the time?

A. That is more than I can say.

Q. You don't know?

A. No, sir.

Q. You were in St. Luke's Hospital one month and 17 days?

A. Yes.

Q. Then in Savannah?

A. Yes.

Q. For two years and a half?

A. Yes, sir.

Q. For two years and a half?

A. Yes, sir.

Q. Then from there to the Baltimore Hospital?

A. Yes, sir.

Q. And you were under treatment most of that time?

A. Yes, sir.

Q. You worked around the hospital somewhat as orderly, didn't you, part of the time?

A. No.

Q. Were you confined to your bed all that time?

A. No. I helped as interpreter quite a few times for the doctors.

Q. Did odd jobs around the hospital while there under treatment?

A. I was not able to do very much. I only had one hand to do anything with.

Q. And you say the doctors there in St. Luke's Hospital fixed your arm so the palm was out there?

A. No, they did not fix it. When it was hurt they left it that way.

Q. Put it in splints and left it in that position nearly six weeks?

A. Six weeks in St. Luke's and one month and 11 days in Savannah Hospital afterward.

Q. Now, you have been working as a watchman since 1923, haven't you?

A. Yes, sir.

Q. How much have you been earning a month?

A. $17 a week.

Q. An average of about $75 a month?

A. Yes, they first started in. Since I got a ship October I get a little more.

[fol. 63] Q. How much are you earning now?

A. $30 a week.

Q. That is about $140 a month for a month of four weeks and a half?

A. Yes, $130.

Q. So after you got out of the hospital you first went to work for about $17 a week, and four weeks in a month, that would be $68.

A. Yes.

Q. And for a month consisting of 31 days, you would get a half a week in addition?

A. Yes, sir.

Q. And that would make about $75 a month you earned as watchman from the time you started 1923?

A. Yes.

Q. And after awhile you got some raises in pay?

A. Yes, sir.

Q. How high did you get as watchman in the matter of pay?

A. $30 a week.

Q. Until you got the present job, and that is what you are getting now?

A. Yes, sir.

Q. And when you were a seaman on ships how much did you get?

A. $95, $125.

Q. But you were not getting that in 1920, were you—do not give us the war scale. Give us the scale you were getting when you got hurt?

A. Before I got hurt, a little before, I was watching on one of the Shipping Board ships, I had $6 a night.

Q. How much were you getting on the ship you were working on just before you met with your accident?

A. $95 a month.

Q. As what?

A. Boatswain.

Q. How many times had you been boatswain on any ship?

A. I have been on the Munson.

Q. How many jobs as boatswain had you held down?

A. Six or seven.

Q. Had you been boatswain previous to this job you [fol. 64] finished with before you were hurt?

A. Yes, sir.

Q. And you say you got $95 a month then?

A. Yes, sir.

Q. And you are getting $120 or $130 now?

A. Yes, I feed myself now.

Q. Of course, on the ship you got your food thrown in?

A. Yes.

Q. You do not know, of course, who hired the men on the Jacksonville, do you?

A. No.

Q. What time did you leave Sam's Hotel that day to go to the ship with Mr. Carlson?

A. Between 3 and 4.

Q. And you took the trolley down?

A. Yes, sir.

Q. Is the trolley near Sam's Hotel?

A. It goes right abreast of it.

Q. Did it take you two hours to go from there to the dock?

A. No, we walked down to Taylor's, not quite half ways, had a bottle of near beer, which we drank, it was very hot, we drank the bottle of near beer, and got the car down there.

Q. How far is Taylor's from Sam's?

A. Five or six blocks.

Q. So you walked five or six blocks around four o'clock in the afternoon?

A. We were standing outside the door a little while talking.

Q. Then you went in Taylor's?

A. Yes.

Q. And had this near beer?

A. Yes, sir.

Q. How long were you in Taylor's?

A. We were not there very long. I do not know how long.

Q. How long?

A. I could not say how long.

Q. Try to think.

A. I might have been a little over half an hour, three-quarters.

Q. You know you have to use up two hours from the [fol. 65] time you left Sam's Hotel until you got to the ship. How much time did you use at Taylor's?

A. Some time close to an hour.

Q. A little while ago it was one-half?

A. Three-quarters.

Q. What else did you have besides a glass of beer?

A. Nothing.

Q. Who was with you besides Carlson?

A. Nobody.

Q. Sure of that?

A. Yes; there were lots of people sitting at the tables, but I did not know them.

Q. Are you sure Carlson was with you at all that day at Sam's Hotel?

A. Not before I went down there.

Q. Are you sure he was at Sam's Hotel at all?

A. Yes, sir.

Q. Are you sure he started to the ship with you at all?

A. Yes, sir.

Q. Don't you know he was on the ship when you came on board?

A. No.

Q. Don't you remember as a matter of fact you sent word you arrived down on the dock and he sent for you to come on board?

A. No.

Q. You don't remember that?

A. No.

Q. Did you come in a taxicab from Sam's Hotel or not?

A. No.

Q. Who was with you in the taxicab if you came in one?

A. I seen no cab.

Q. Didn't you come in a taxicab?

A. No.

Q. What sort of cab was it you came in?

A. A trolley car.

Q. Who was with you?

A. Carlson, the boatswain.

Q. Sure.

A. Yes.

[fol. 66] Q. Had you been with Carlson the night before?
A. No.
Q. Sure?
A. He came to the house, he stood outside a while, but I was not with him.
Q. The night before?
A. The night before.
Q. Who was with him then?
A. Nobody.
Q. Who was with you?
A. Nobody.
Q. Where is Carlson now?
A. I don't know.
Q. You have not taken his testimony in this case?
A. No.
Q. Have you ever seen Carlson from that day to this?
A. No.
Q. Do you know what became of Carlson?
A. No.
Q. Do you know whether he remained to go on the voyage when the "Jacksonville" sailed?
A. No.
Q. Did you hear he did not?
A. No.
Q. Did you know he was discharged for being drunk three or four days later?
A. No.
Q. You did not know that?
A. No.
Q. And you never saw him since?
A. No.
Q. Do you know where he is now?
A. No.
Q. Have you tried to find him?
A. Yes.
Q. When did you last try to locate him?
A. Up to a couple of days ago.
Q. Been trying for practically five or six years to locate Carlson, haven't you?
A. Yes, sir.

Mr. Atwell: Will counsel produce the operating contract or payroll of the ship, or will you stipulate the Fleet Corporation was operating the ship at that time for the United States?

Mr. Cunningham: I think I have the payroll here. What do you want it for?

[fol. 67] Mr. Axtell: The stipulation the Fleet Corporation was operating the ship that time.

Mr. Cunningham: I won't stipulate the Fleet Corporation was operating the ship, because it was not. I have a payroll to show who it was that was operating the ship.

Mr. Axtell: Counsel has produced a photostat of the payroll of the "Jacksonville" covering July 30th to August 5th, 1920. I offer that in evidence.

(Marked Plaintiff's Exhibit 9 in Evidence.)

Mr. Axtell: Will counsel produce the operating contract between the American Shipping Company and the United States Shipping Board Emergency Fleet Corporation covering that date?

Mr. Cunningham: I haven't got it with me.

Mr. Axtell: We have subpœnaed the operating contract.

The Court: You have not made these people a party.

Mr. Axtell: I am trying to show the contract by which these people were operating for the Fleet Corporation. We subpœnaed it a long time ago.

Mr. Cunningham: The subpœna was served on our office today.

The Court: If you have not got it, do you want time to get it?

Mr. Cunningham: I do not know where it is.

[fol. 68] Mr. Axell: Can you stipulate it was an M. O. 4 contract?

Mr. Cunningham: I do not know, but I assume the American Shipping Corporation was operating the ship pursuant to one of the managing operating agreements which were incident to the way the Shipping Board maintained the operation of its ships.

Mr. Axtell: That may go on the record as a stipulation?

Mr. Cunningham: I can only let it go in in the exact words I gave you. I assume it.

The Court: You have not proved yet that the Emergency Fleet Corporation was operating the boat or owned it.

Mr. Axtell: We always have that produced.

The Court: It is denied in the answer.

Mr. Axtell: I know that.

The Court: Why didn't you subpœna it?

Mr. Axtell: We have subpœnaed it. It was subpœnaed a year ago when this case was on trial.

The Court: A year ago was too long ago.

Mr. Axtell: And yesterday.

The Court: And that was too short.

Mr. Axtell: Ordinarily they attach it.

Mr. Cunningham: Mr. Axtell knows when he sues the operator and the Fleet Corporation and joins the two as defendants the operating agreement is attached to the answer in which it admits it manages and operates pursu-[fol. 69] ant to that agreement, and he knows the Fleet Corporation does not operate it, and that is why the answer here is a denial.

Mr. Axtell: We entered into a stipulation with Major Dreyer——

The Court: Do not talk about that in front of the jury. (To the jury.) You can have a recess of 5 minutes. Do not allow anybody to talk to you about this case. (Jury left the court room.)

(The jury returned.)

William T. Power, called as a witness on behalf of the plaintiff, being duly sworn, testified as follows:

Direct examination.

By Mr. Axtell:

Q. Are you a practicing physician, doctor?
A. I am, yes, sir.
Q. Licensed in this State?
A. Yes, sir.

Q. Will you state briefly your experience and qualifications?

A. I graduated from medicine——

Mr. Cunningham: I concede Dr. Power's qualifications, and that he is a competent doctor.

Mr. Axtell: Will you concede he is an unusually competent doctor?

Mr. Cunningham: He is a practicing physician of the State of New York with plenty of experience and has testified for you many times in your cases.

Mr. Axtell: I have not asked for gratuitous suggestions of that character.

[fol. 70] Q. Do you do X-ray work, doctor?

A. Yes, sir.

Q. It is a fact you examine a great many seamen for me whose claims I represent?

A. I do, yes, sir.

Q. Did you examine Mr. Johnson?

A. Yes, sir.

Q. The plaintiff in this case who sits back there?

A. Yes, sir.

Q. When did you last examine him?

A. March 4, 1927.

Q. Did you make an X-ray of him yourself?

A. I made an X-ray of his left forearm, and also examined that arm under the fluorscope.

Q. Is this the X-ray you made?

A. Yes, sir.

Q. Will you look at it and make sure that is the one?

A. Yes, that is my X-ray; my name is on it.

Mr. Axtell: I offer that in evidence.

(Marked Plaintiff's Exhibit 10 in Evidence.)

Q. Did you develop and print it yourself?

A. Yes, sir.

Q. Now, Dr. Power, will you just tell what the X-ray we just had here shows?

A. This is an X-ray of the left forearm. This bone on the outer side is known as the radius and the one on this side is known as the ulna. In this picture this is the radius on this side and the other one is the ulna.

Q. Are those two taken from different views?

A. Yes, different positions. The one is from front to back and the one on the right hand side is sideways.

[fol. 71] Q. And that shows the condition as it was the other day?

A. The 4th of March. The radius shows here, an old healed fracture in the upper third. The fragments are united with a little angular effect bending it toward the other bone, the ulna. The ulna has, down at the juncture of the lower and middle third, an old healed fracture, healed in perfect position. At this point, at the juncture of the upper and middle third is another fracture which is not firmly united. It shows better on this picture. You can see the angulation here. I examined this also under the fluoroscope, which is an instrument by which you actually see the bones to check up, and found there is false motion in the bone here, the union between the two is not bony, it is union of a cartilaginous nature.

Q. Take this picture of the same bone, but made in 1923, being Exhibit 7. This is the one produced by the Central X-ray man a little while ago, who says it was made in 1923, I believe, October 10th, does that show the same bones with the picture taken in about the same relative positions as you have shown it on your plate?

A. It does.

Q. What is the difference?

A. In the lateral view here it shows distinctly lack of union. In the upper fracture of the ulna——

Q. Is that this place?

A. Yes.

Q. The dark line between the ends of the bone shows while they are united it is not a bony union?

A. Yes.

Q. There is a cartilage there and the cartilage does not show on the plate?

A. Yes.

Q. But you can tell from manipulating the arm that the bones were readily united?

A. Yes.

[fol. 72] Q. Is this the elbow here?

A. That is the elbow joint.

Q. Did you hear the explanation of the plaintiff as to the manner in which he had broken his arm?

A. No.

Q. Assuming he said he was on this gangway going up, that there was a stanchion near the middle on the right hand side, and that he fell between that stanchion and the end of the gangplank nearest the ship which he was leaving, and that his arm went around the stanchion and he weighed 180 pounds or so, and his body was hanging off the plank, his arm went around the stanchion in the position I am demonstrating now, that his hand was against the plank itself, that while he was hanging there he heard the bones crack, can you state with reasonable certainty from the condition of these bones as indicated in the two X-ray plates, whether or not the bones were broken in that fashion? Assume further in falling he fell between the two ships, scraping his jaw and scalp, cutting his scalp open, was knocked unconscious, and received some other injury to his leg.

A. Yes, I could.

Q. Do you have in mind X-rays made of his wrist which failed to show any fracture of the bones of the wrist when you made that answer?

A. I have seen all these X-rays when he came to my office for examination. I have in mind the whole condition.

Q. Look at X-ray Exhibit 4 and state if that is an X-ray of the left hand, of which the X-ray of the arm has been shown?

A. This is the left hand and wrist.

Q. Do you find evidence of fracture of the bones in the wrist?

A. There is no fracture of bones there. There is atrophy.

[fol. 73] Q. Bearing in mind there is no fracture of bones in the wrist, and the bones above are broken, and he testifies he hung in that position I described from the gangplank with his arm around the stanchion, could you, with all those facts, state with reasonable certainty the fracture of the bones of the forearm did occur in the manner he described?

Mr. Cunningham: I object, calling for a conclusion on the part of the doctor.

The Court: Sustained. All he can testify to is whether he can testify with reasonable certainty whether that was a competent and producing cause.

Q. Can you state whether, with reasonable certainty, that kind of strain could be the competent and producing cause of such a fracture?

A. Yes.

Q. Had he fallen clear from the gangplank in between the ships and struck the fender or whatever was lying there, and had thus broken his arm, do you think it possible or probable some bones in the wrist would also be broken?

Mr. Cunningham: I object, calling for a conclusion.

The Court: Sustained.

Q. What do you find else in this X-ray of the wrist?

A. The lower ends of the radius and ulna, bones of the wrist, and the upper ends of the bones of the hand, are all atrophied.

Q. Atrophy means what?

A. Wasted.

Q. What is the cause of the wasting, in your opinion?

A. Lack of use mostly.

[fol. 74] Q. Taking Exhibit 5, can you tell what that shows, if anything?

A. That is an X-ray of the head and face. That shows rather indistinctly a fracture of the nasal bone at this point.

Q. I show you a picture marked Plaintiff's Exhibit 6. Can you explain that to the jury?

A. This is an X-ray of the knee joint and the femur or thigh bone above it and part of the bones of the leg below. This shows an old united fracture of the junction of the lower with the middle third of the femur.

Mr. Axtell: It is admitted on the record the man had this fracture of the femur bone above the knee before. No blame is attached to the ship for that.

A. The patella, or knee-cap here shows a diamond area, a small new growth of bone on the edge here, and on the upper border here.

Q. Assuming that the plaintiff said that his knee was injured and swollen and inflamed and that the doctor was boring into it, or something, a short time after he entered the hospital; that he now complains while the knee was all right prior to the accident, it bends back further than it should a couple of inches and further to the side; can you

state whether or not such condition might have been produced by such injury as falling in between ships?

A. Such a fall might injure his knee.

Q. What is the matter with that knee, what does it mean to you as an expert?

A. This protrusion of bone there might be the result of injury to the bone, or might be the result of periostitis, which is an inflammation of the covering of the bone.

[fol. 71] Q. Can you tell the jury what the doctor was probably doing when he was looking into his knee, as he called it?

Mr. Cunningham: I object, calling for a conclusion.

The Court: Objection sustained.

Q. Did you examine his knee the other day?

A. I did.

Q. What did you find to be the condition?

A. I found that it was capable of over-extension, that is to say, of bending more than normal and showed a weakness of the ligaments controlling the joints.

Q. What is the ordinary, competent producing cause of such condition?

A. Usually any injury about the knee, severe strain, also a synovitis, inflammation of the lining membrane of the joint.

Q. Does this X-ray, Exhibit 5, show anything in connection with his injury or accident?

A. This does not.

Q. Will you tell the jury what you observed as to the physical condition of the arm at the time you examined him?

A. I found he had a long scar resulting from a wound. He told me he had an operation of the arm, and this appeared to be the scar of operation, one extending the whole length of the left forearm. I found that the left forearm was smaller than the right, that the whole arm appeared shorter than the right. There was a scar like swelling about as big as a large—as big as about half of a small tangerine—smaller than that—probably the size of a hickory nut at this scar about the middle of the arm. On manipulation of the arm there was false motion at the point of the upper [fol. 72] fragment of the ulna where there should be no motion. His grip was weak.

Q. Do you recall whether he could close his hand?
A. He could close it, but weakly.
Q. Would you mind looking at his hand now and ascertaining to what extent he can close his hand?
A. He has a weak grip in the hand.
Q. Can he close his hand close up if he has nothing in it?
A. It does not close all the way; closes half way.
Q. By using force you can bend the fingers back and he seems to have evinced some pain?
A. Yes, sir.
Q. Did you examine his head?
A. Yes.
Q. What did you find there?
A. I found a linear scar running in a line across the lower part of the skull at the back.
Q. What is the extent of it?
A. About 4½ or 5 inches—4½ inches long.
Q. Did you find any other scar?
A. On his head?
Q. Yes.
A. No, I did not.
Q. Did he tell you anything about his scalp having been torn off?
A. Yes, sir.
Q. Did you examine him to see if it was possible his scalp was torn at the sides to permit such a thing to occur?
A. It did not appear to me it came over as he described it. Patients frequently think that.
Q. You are inclined to think he was mistaken about that?
A. Yes; I doubt if it came as far forward as he thinks.
Q. Are you accustomed to estimating the extent of loss of function of any particular member, arm or leg?
A. Yes, sir.
[Vol. 777] Q. Have you made such experts for the Compensation Commission?
A. Yes, sir.
Q. Would you please state in your opinion what is the amount of loss of function in the left arm?
A. In my opinion he has lost 75 per cent. of the function of the entire left arm.
Q. Is that condition permanent?
A. Yes.

Q. And as to the left leg, how about that?

A. His left knee, that hyperextension of the knee causes it to be weak.

Q. From the point of view of a seaman how much function has he lost, if any?

A. In my opinion about 15 per cent.

Q. Did you observe whether there were any scars on his jaw or chin?

A. I do not remember seeing any.

Q. Will you step up here again, Mr. Johnson?

(The plaintiff did so.)

Q. Look at his chin and see if you can see any now?

A. Yes, there is a scar just to the left of the median line on the under side of the lower jaw, about approximately one inch long.

Q. Will you show me where the scar is on his head?

A. It is right in this crease.

Q. You do not find cuts up here that would indicate it might have been torn up there?

A. No.

Q. Is there any question in your mind but what that is a scar, doctor?

A. None whatever.

Q. If this man is 55 now, and prior to August 20th was in good health, and free from accident or injury, except an accident of a fracture of the femur bone 5 or 6 inches which had healed, and a fracture of the bridge of the nose, [fol. 78] and that he fell from a gangway of a ship a distance of 12 or 15 feet between two vessels which were about 2½ or 3 feet at the top part and the bottom possibly 8 inches; that he broke his left arm, he heard it crack while he was hanging to the gangway while the arm was passed around a stanchion, and he fell down striking the back of his head on the steel rail of a ship, scraping his head on the rivets——

Mr. Cunningham: That is the first time I heard testimony he struck his head on a steel rail of a ship.

The Court: I did not hear it.

Mr. Axtell: I recall the plaintiff said that.

The Court: I do not recall it: it may be so.

Mr. Axtell: I will risk it that he did say so——

Mr. Cunningham: All right, let it go.

Mr. Axtell: And consent it be stricken out if the reading of the minutes discloses I am in error.

Q. (Continuing:) Assuming that was testified to, that afterwards he came to in the hospital about 9 o'clock and stayed in this hospital for one month and some days, that his arm was in a splint and his hand turned out, and he was afterwards transferred to another hospital, remained there a month or so, and then another operation was performed, perhaps two operations performed, that his scalp had been stitched up before, and his chin had been stitched up, could you state with reasonable certainty whether or [fol. 79] not such a fall might have been the competent producing cause of the injuries from which you found him to be suffering at the time you examined him?

A. Yes.

Q. Was such fall, in your opinion, the competent producing cause of such injury?

A. In my opinion, yes.

Q. Did you examine this man's eyes, or did he make complaint about his eyes?

A. I examined his eyes.

Q. Are you a specialist as well in eye diseases and treatment?

A. I am.

Q. Will you state your experience in that direction?

A. After serving an interneship in the General Hospital, leaving there in 1904, I entered the New York Eye & Ear Infirmary to take up eye work.

Mr. Axtell: Perhaps you will concede that.

Mr. Cunningham: That is the first time I heard it.

A. I have been practicing as an eye specialist for 20 years.

Q. Prescribe glasses?

A. Yes, sir.

Q. Did you test his eyes?

A. Yes, sir.

Q. In what condition did you find them?

A. I found he had a vision known as 20/120. That would be about one-fifth of normal vision, but corrected

by glasses to normal vision. He has one degree of far-sightedness.

Q. From your examination of this man do you think any injury he might have sustained that night, due to being struck on the head, has anything to do with his vision?

A. No.

Q. In your opinion that has nothing to do with his eyesight?

A. No, he has had that far-sightedness all his life, probably.

[fol. 80] Cross-examination.

By Mr. Cunningham:

Q. You had to look quite closely before you discovered the scar on the chin?

A. Yes, sir.

Q. And you had to look with almost equal closeness to find the scar in the back of the neck?

A. At first.

Q. It might be the normal crease of a normal fat man or a man beginning to show the sign of age?

A. At first glance, but on examination it showed to be scar.

Q. You have not any doubt it has the signs of scar?

A. It is the site of scar.

Q. A scar he got from a cut at the time of the accident, you haven't any doubt about that?

A. No.

Q. But you have serious doubt about the accuracy of his statement that his scalp was hanging over his eyes when he came to in the hospital at 9 o'clock?

A. Yes.

Q. As a matter of fact, it would be an almost foregone conclusion before he came to the nurse or doctor would have pulled his scalp back in place?

A. Yes, sir.

Q. How do you account for his telling that story?

A. It is an ordinary story from a patient with a bad scalp wound.

Q. It is an hallucination?

A. It is their conception of what happened.

Q. So if he had a conception of that sort with respect to his injuries which was the result of the shock, there might also be a considerable doubt as to the accuracy as to what happened in sustaining the fall, might there not?

Mr. Axtell: I object.

[fol. 81] The Court: You put him on as an opinion witness.

Mr. Axtell: Not as to comparisons.

The Court: I will let him answer.

Mr. Axtell: I object to that, taking a question from the jury. It is for the jury to draw the conclusion.

The Court: I will let him answer.

A. In general all persons who meet with an accident find difficulty in giving an exact description of how they got hurt.

Mr. Axtell: I move to strike it out as not responsive.

The Court: Let it stand.

Mr. Axtell: Exception.

Q. Of course, if a man fell, weighing as much as this man testified he did, as I recall his weight at that time was 280 pounds, and not 180, as Mr. Axtell said, a fall of 15 or 20 feet between two ships could readily produce a badly fractured arm?

A. Yes.

Q. And if, as he said, the ships at the water level or edge were only 8 inches apart, there would be considerable difficulty about a man of that build hitting the water at all?

A. Yes.

Mr. Axtell: Who said 280 pounds?

Mr. Cunningham: He did.

By the Court:

Q. That is as true if he weighed 180 as if he weighed 280 pounds?

A. Yes.

[fol. 82] By Mr. Cunningham:

Q. If the ships were as close as Johnson said, 8 inches, it would be impossible for him to fall through so narrow a space?

A. Yes, sir.

Q. If the space was not wide enough for him to fall through, so he struck the side of the vessel, such striking of the vessel by a man of his size, 180 pounds, could produce the fracture you found in the picture?

A. A fracture of that kind could be produced by a twisting effect, a fall on his hand would give him *at* a Colles' fracture at the end of the bone.

Q. Do you mean the kind of fractures those photographs show could only be produced by twisting around something and wrenching his arm?

A. More apt to be produced by a twist than an ordinary fall.

Q. It would be possible for him to sustain such a fracture by his arm getting twisted around in the line itself, would it not?

A. Yes.

Q. He would not have to have a stanchion there, or anything of that sort?

A. Not necessarily.

Q. If his arm got twisted in it there, his weight in it, it might crack the bones?

A. Yes.

Q. And that could happen if a man lost his balance going up an incline 20 degrees and falling and trying to save himself?

A. If the arm was twisted in the fall.

Q. In the way in which he says?

A. Yes.

(At this point an adjournment was taken till Monday, March 28, 1927, at 10:30 A. M.)

[fol. 83] Brooklyn, March 28, 1927.

(Met pursuant to adjournment; present as before.)

Mr. Axtell: I offer in evidence the operating contract which we were discussing the other day.

(It is marked Plaintiff's Exhibit 11.)

Mr. Axtell: I want to recall the plaintiff for a moment.

JOHN JOHNSON, recalled, testified:

By Mr. Axtell:

Q. How long have you known me?
A. 12 or 15 years.
Q. Did you work for me at one time?
A. Yes.
Q. On a boat?
A. Yes.
Q. Did you work for Mr. R. L. Bigelow, a banker?
A. Yes.
Q. You had charge of his yawl "Flamingo"?
A. I did.
Q. Are you familiar with the custom or practice upon which seamen are admitted to the United States Marine Hospital?

Mr. Cunningham: I am willing to take Judge Campbell's ruling that he had a right to go to the hospital. If I am in error, I will admit it and will ask the jury to disregard what I said on that subject.

Q. When you went on board this ship the "Jacksonville" did you notice any sign or notice posted at the gangway [fol. 84] or at the dock or anywhere forbidding visitors or anybody to go on board the ship?
A. No, sir, there was no sign. There were two watchmen at the gate, which permitted me to go on board.
Q. But you saw no notice or sign of any kind at the gangway or at the dock with regard to people going on board this ship?
A. No, sir.

Crossexamination.

By Mr. Cunningham:

Q. One or two questions: All the treatment you had in the hospital, on the "Jacksonville," and all the treatment you had the two years and a half in the hospital in Savannah and the treatment you had afterwards in Baltimore in the Marine Hospital was entirely without any expense to you whatever?
A. There was no expense.

Q. It was free; it cost you nothing?

A. Yes.

Q. So that when you say in your complaint that you had paid out and would have to pay out large sums of money for medical and surgical attendance and for medicines and for your maintenance and cure, that is not so, is it?

A. I can't tell you about the complaint.

Q. Did you see the complaint before it was verified by Mr. Axtell, your attorney?

A. I saw some of the papers; I do not remember that.

Q. So, as it stands, you had all of that medical attention and treatment for upwards of 3 years free of charge, and have not paid out any money yourself?

A. The Sea Service calls for it.

Q. You heard what I asked you. I said you had it free.

A. I had it free of charge.

Q. It didn't cost you a cent?

A. No.

Q. You spoke of Sam's Hotel the other day and going [fol. 85] from there with Mr. Carlson down six blocks to Taylor's?

A. Yes.

Q. Was Taylor's on the trolley line also?

A. Right on the corner.

Q. Did the trolley line that went by Sam's Hotel go by Taylor's also?

A. It turned up at the corner.

Q. The trolley line went by Taylor's also?

A. Yes.

Q. Was Taylor's nearer to the dock than some of the other distances were?

A. It was nearer to the dock.

Q. Would you say 6 blocks nearer, when you were on the trolley?

A. 6 blocks nearer to the Jacksonville.

Q, What sort of a place was Taylor's?

A. It was soft drinks.

Q. Was it a saloon?

A. No, it was a place where you go in and call for sandwiches and get some refreshments.

Q. Did they have a bar there?

A. Yes, a counter.

Q. It used to be a regular saloon before Prohibition fell on us?

A. I never saw it before, so I do not know.

Q. Was that the first time you had been there?

A. I had been in there three or four times.

Q. (Repeated.) Was that the first time you had been there?

A. Before that?

Q. Yes.

A. Yes.

Q. How much of your time have you lived in Jacksonville?

A. Ever since 1901, every winter.

Q. So you have been living in Jacksonville for upwards of 18 or 19 years?

A. Something like that, yes.

Q. And you were pretty well familiar with the whole lay-[fol. 86] out of the streets in Jacksonville?

A. No, I am not very much acquainted.

Q. You were there for 19 winters?

A. I was there off and on. I was in ships; I stayed up there most of the time.

Lewis Snyder, being duly sworn and examined as a witness for the plaintiff, testifies:

By Mr. Axtell:

Q. What is your occupation?

A. Second officer.

Q. How long have you been going to sea?

A. 27 years.

Q. Have you ever been boatswain on ships?

A. Oh, yes.

Q. American ships?

A. American ships.

Q. Where were you born?

A. In New York.

Q. How old are you now?

A. 46 years.

Q. And during that time you have been boatswain?
A. Yes.
Q. How many times did you ship as boatswain?
A. Once in this country.
Q. How much of the time have you been second mate?
A. About 4 years.
Q. In what other capacities have you worked on ships?
A. Third and fourth officer, quartermaster, able seaman and deckhand.
Q. How long were you third and fourth officer?
A. Seven years.
Q. On what ships have you sailed?
A. I have sailed on a dozen different ships; I was on the "Alioth"——
Q. Without referring to the names, give us the trades [fol. 87] you were in.
A. Atlantic coast, South America, China, West Coast.
Q. What types of vessels have you shipped in?
A. Anywhere from 5,000 to 20,000 tons.

(It is stated that her gross tons are 3,853.)

Q. Have you shipped on any vessels of larger size?
A. Oh, yes, yes.
Q. Have you been on vessels that have been engaged in coastwise or trans-Atlantic trade?
A. Yes.
Q. Have you observed the rules under which these vessels are operated?
A. I am fairly familiar with the rules.
Q. Are you familiar with the methods that have been in vogue for getting employes for the deck department?
A. I am.
Q. Your services have been entirely limited to the deck department?
A. Well, yes; I might say so.
Q. You must have been in the engine room some time too. What were the average crew of an ordinary freight steamer in the coastwise or trans-Atlantic trade? What do they run.
A. It all depends on the size of the vessel; 7,000 tons would have 34 or 35 men.
Q. 30 to 40 men would run from 3,000 to 5,000-ton vessels?

A. Yes.

Q. Have you been in vessels carrying crews of that size?

A. Yes, sir.

Q. Are you familiar with the rules and regulations on those ships with regard to getting employes?

A. Yes.

Q. Had there been any custom or practice in vogue in 1920 of telling the boatswain to get men to work in the deck department under him?

[fol. 88] Objected to unless it develops that this witness has sailed in United States Shipping Board vessels.

A. I have sailed in Shipping Board vessels.

Q. You have?

A. Yes.

Q. Then answer the question, will you?

A. Yes, it was customary.

Q. What was customary?

By the Court:

Q. What is the custom? You say that there is a custom?

A. Yes.

By Mr. Axtell:

Q. What is the custom?

Mr. Cunningham: Objected to unless it appears definitely that ships this man has sailed on belonged to the United States Shipping Board and what the time was and when this particular experience was obtained.

The Court: He may answer.

Q. What was the custom at that time?

A. It is usually the custom that he may——

The Court: Custom means something that is generally done; not some isolated occurrence; not what is done on one ship, but what is generally done.

Mr. Cunningham: I think the witness should advise us first what Shipping Board vessels he has shipped on, and [fol. 89] how many of them.

The Court: If you want to cross examine him as to navigation, you may.

By Mr. Cunningham:

Q. What Shipping Board vessels have you sailed on?

A. I will enumerate them for you; the "Alioth," that was the first one in 1918, and the "Elvada."

Q. What year was that?

A. In 1919, the early part of 1919; there was the "Collingsworth."

Q. In what year?

A. In 1920. (Examines paper.) It will take some time to tell you. From July 21, 1920, to October 18, 1920, the "Collingsworth," and then on the "Phenix."

Q. When was that?

A. That was about in 1920; somewhere around there.

Q. Are those the only four United States Shipping Board vessels that you have sailed on?

A. No, I have been on more.

Q. Well, tell us about them.

A. Give me time to think about that.

(It is conceded that the Shipping Board has 1,500 boats.)

A. (Continuing:) The "West Sequana."

Q. When did you sail on that one?

A. In 1923. The "Dewey" in 1923.

Q. Any others?

A. The last one I was on was the "Westward Ho"—I guess that is about enough—from November to February, 1926-1927.

Q. So you have sailed in some seven Shipping Board vessels ranging from 1918 to February of this year?

A. Yes.

[fol. 90] Q. In what capacity have you sailed on those vessels?

A. Third and second mate.

Q. Anything lower or higher?

A. Well, as boatswain on the "West Sequana;" I came back from China in her about two years ago.

Q. So that was eight?

A. There may be more; I can't remember.

Q. In none of them did you ever serve as master or chief officer?

A. No.

Q. In your capacity you never had anything to do with hiring the men yourself, did you?

A. Well, when the chief officer wasn't there or the captain wasn't here I was in charge of the ship as second officer.

Q. Were there any occasions when you did the hiring yourself?

A. Not officially.

Q. What do you mean by "officially"?

A. When the captain and mate were out on the ship there was never any occasion for me to employ any men.

Q. And you never did employ any?

A. As second officer, officially, no; but——

Mr. Astell: Objected to.

The Court: He may answer.

Q. Those matters fall to the lot of the captain and chief officer?

A. In hiring the crew it falls to the lot of the chief officer.

Q. And the chief officer submits the men subject to the approval of the captain, does he not?

A. No.

Q. Then the chief officer has the say entirely, himself?

A. Well, I will answer that with reservations. That may be a matter that I have not mentioned. The master is always master of the ship, and if the master objects to any man he has got to go ashore.

[fol. 91] Q. So that after all, the action of the chief officer is subject to the approval of the captain?

A. Subject to the approval of the master.

Q. You have heard that there is a Shipping Board Sea Service Bureau, haven't you?

A. Yes.

Q. And you know that nobody is ever hired or permitted to go to work on Shipping Board vessels without having passed the Sea Service Bureau's approval first, or to men under the grade of officer?

Mr. Astell: Objected to, that counsel is going beyond the question.

The Court: He is trying to find out whether the witness is qualified. That comes up on cross examination.

By Mr. [illegible]:

Q. Will you answer the question now, what is the custom of American officers engaged on Shipping Board boats with regard to hiring men in the deck department?

A. Well, there are several ways of answering that question.

Q. Have my question. Is there any general custom or practice in such vessels that would delegate authority to the boatswain

Objected to.

The Court: You are leading the witness.

Mr. Cunningham: I think the question should be limited to Shipping Board vessels.

The Court: Yes, if it is a general custom. We are not examining the men up now. The general custom must be an industry custom.

[fol 91] Q. Tell what the custom is in regard to hiring a boatswain engage or get men for the deck department.

A. It all depends on how many men are required. If it is only one man a boatswain would go to the mate and say, "I am short a man," and the mate would say, "There is a good man ashore, go and get him." If it is a case the Shipping Board requires an officer's specific approval, and that has have to signed for a good many years, and it is the custom today.

Q. Was there any general custom or practice in 1920 on American merchant vessels, including the Shipping Board vessels, with regard to permitting the crew of a vessel to have visitors on board?

A. Yes, under otherwise specifically ordered.

Mr. Cunningham: What does it mean?

A. (continued). When a ship gets alongside a dock special orders are issued that no outsiders are allowed on board.

By Mr. [illegible]:

Q. What is the customary method of issuing such rule?

Mr. Cunningham: Objected to as incompetent, irrelevant and immaterial.

Objection overruled. Exception.

A. The word is usually issued from the chief officer and comes from the captain in the form of writing or comes verbally sometimes. He will pass the word along at the dining table, "No visitors on board."

[144-50] Q. That would not go to the crew unless the men are in the dining room?

A. The chief tells the sailors; the chief officer tells his assistants and they tell the others and gangwaymen.

Q. Suppose they don't want anybody on board; what do they do then?

A. There is a sign placed in several different places that are public and open to the crew, probably one in the alleyway and one back aft.

Q. There is sometimes one at the foot of the gangway?

A. Well, it depends on the size of the vessel.

Q. Is it true that in American ships the practice has been to permit the crew to go ashore and to have visitors unless written notice are published to the contrary?

Objected to.

The Court: He has said that the orders were sometimes written and sometimes verbal.

Question withdrawn.

Q. Is it generally the custom on American vessels to permit visitors, and to permit men to leave the ship when not on duty?

A. Yes.

Q. Unless orders were issued to the contrary?

A. Yes.

Q. I suppose it sometimes happens in vessels that you have to cross the deck of one vessel to get to the deck of another one. Is that true?

A. Yes.

Q. That is a common thing in shipping, isn't it?

A. Yes.

Q. What is the usual method of providing men with means of getting from one ship to the other?

A. A gangway.

[144-51] Q. What is a gangway?

A. Well, a gangway is built of solid planks anywhere from an inch and a half to two and a half inches thick and battens nailed across the lanyards on each corner and each corner is made fast. The end on the upper ship is made fast up there and the end on the lower ship is made fast on the lower end.

Q. Are there any railings?

A. There should be life lines, one each side.

Q. Suppose one vessel's deck is 9 to 10 feet higher than the deck of the other ship or say the main deck of one boat is 9 or 10 feet higher than the boat deck of the other one and it is necessary to span that distance; that they are 2 or 3 feet apart; how long a gangplank would be necessary under such circumstances, in your judgment?

A. Well, it would be from 12 to 19 feet; anywhere from 12 feet up.

Q. If it was 10 feet distant and the gangway were only 12 feet long, you would only have 2 feet extra?

A. Yes.

Q. The gangway would be pretty near perpendicular?

Objected to as leading.

The Court: Yes, let him answer. Don't lead him.

A. Yes.

Q. Is a ladder used sometimes where you have not a gangway long enough?

A. Yes.

Q. What is the maximum angle that the gangway is usually erected at?

A. 45 degrees; that would be safe.

[fol. 95] Cross-examination.

By Mr. Cunningham:

Q. The angle would vary considerably according to what the lower end of the gangplank rested on?

A. Yes, it would vary; but a safe angle would be 45 degrees.

Q. An angle of 20 degrees would be very safe, would it not?

A. I don't think so; not if it was a gangway.

Q. 45 degrees is a greater angle than 20 degrees?

A. No, not for a gangway; the more acute the angle for a ladder, the safer it is, but the greater the angle on a gangway the safer the gangway is.

Q. That is 90 degrees, is it not (indicating)?

A. 90 degrees, yes.

Q. 45 would be about like that, would it not (indicating)?

A. Yes.

Q. Or the opposite way going down, that would be about 45 degrees, would it not (indicating)?

A. Well, yes.

Q. And 20 degrees would be about like that (indicating)?

A. Yes, and for a gangway that would be the safer.

Q. Then the gangway that rests at a 20-degree angle would be safer, would it not?

Mr. Axtell: He is figuring the other way.

A. No, I probably misunderstood you. I figured this would be a 20-degree angle and that would be a 60 or 70 degree angle (indicating); a 45-degree angle, the gangway would rest like this (illustrating). That would be the safest for a gangway, and the more acute the angle the safer it would be for a ladder.

[fol. 96] Q. We are talking about gangways.

A. Well, for a gangway 45 degrees should be a safe angle.

Q. And if the angle was about 20 degrees it would be much safer?

A. Yes.

Q. Of course, the degree would vary with whether it rested on the deck or on something you had placed on the deck, and raised the lower end of the gangway higher, would it not?

A. Yes; if you have——

By the Court:

Q. If the gangplank rested on something which rested on top of the deck would the angle be greater or less than if it rested on the deck?

A. It would be less.

By Mr. Cunningham:

Q. You have heard of the Sea Service Bureau of the United States Shipping Board?

A. Yes.

Q. And you know that is the universal Sea Service Bureau which regulates the personnel of the ships of the Shipping Board?

A. Yes.

Q. And you know before a man below the grade of officers can get a job on any of the ships he has to go and apply to the Sea Service Bureau? You know that, don't you?

A. No, let me explain this to you——

Q. No, do you know it or don't you?

A. Yes, I know it.

Q. Is it a fact that in order to get a job as boatswain or any of the grades below that of officer—speaking of the deck squad—is it a fact or not that he must obtain the job through the Sea Service Bureau?

A. He must obtain their O. K.

[fol. 97] Q. In other words, he goes through the Sea Service Bureau?

A. Before he goes on——

Q. You can answer yes or no?

A. Yes; but there are different ways of answering.

Q. He has to go through the Sea Service Bureau?

A. Where there is a Sea Service Bureau, yes.

Q. Do you know whether or not there is one in Jacksonville?

A. I couldn't say.

Q. Do you know whethere there was one there in 1920?

A. I have not been there.

Q. So if they applied to the Sea Service Bureau and had been accepted, they are given a slip?

A. Yes.

Q. Which slip they present to the chief officer or the master when they come on board a ship?

A. Yes.

Q. And until they present that slip they can't get a job on the ship, can they? Yes or no?

A. Well, they don't go on the payroll, no.

Q. If they don't go on the payroll they are not very much interested in the job, as a general rule, are they?

A. No.

WILLIAM WAYMAN, being duly sworn and examined as a witness for the plaintiff, testifies:

By Mr. Axtell:

Q. What is your occupation?
A. I am a mate; chief mate.
Q. How long have you been going to sea?
A. For about 16 or 17 years.
Q. In what capacity?
A. All capacities; I went from sailor up.
[fol. 98] Q. From ordinary seaman?
A. From ordinary seaman, yes.
Q. Did you go as a deck boy once?
A. Yes.
Q. How old are you now?
A. I am 32 years of age now.
Q. Where were you born?
A. I was born in New York.
Q. Have you sailed in any vessels of the Shipping Board?
A. Yes, sir.
Q. About how many?
A. I think about 7 or 8.
Q. What tonnage?
A. Well, they vary; anywhere from about 2,000 tons to about seven or eight or nine thousand tons.
Q. In what trade?
A. Coastwise and foreign.
Q. Have you been in private vessels?
A. Yes.
Q. How many?
A. About a dozen.
Q. I mean in any service?
A. I was on private vessels for about 10 or 12 years.
Q. How many vessels were you in during that time?
A. I couldn't tell you how many, but I think about 15, or maybe 12 or so.
Q. Have you observed whether there is any general custom or practice with regard to getting men for the deck department in ports through the agency of the boat?
A. Yes.
Q. What is the practice?

Mr. Cunningham: Objected to unless he has had experience on Shipping Board vessels.

The Court: He testified he had had experience.

Q. Well, tell us what the names of the Shippnig Board boats you were on are, and the dates and the capacities in which you were employed?

[fol. 99] A. I couldn't say the exact dates, but I can say the vessels. The steamship "Freedom," I was on her in 1918 as second mate; the steamship "Goodspeed"——

Q. How big was the "Freedom"?

A. The "Freedom" was about 3,000 tons.

Q. Now the Goodspeed?

A. She is a lake type vessel about *about* 2,400 tons. I was on her as second mate and mate, in 1920. The steamship "Wynooche," as second mate in 1921, second and first mate, and the steamer "West Lake" in 1922, and the steamship "Sabatawan."

Q. That boat runs to South Africa?

A. Yes, but not when I was on her; that was recently.

Q. When were you on those ships?

A. On the "Sabatawan" I was in 1926, and only a few months; that is about all I can think of.

Q. Do you know whether you had been on any others or not?

A. I was probably on a couple or so more.

Q. Have you been on board vessels that you did not work on?

A. Yes.

Q. Do you know a great many merchant marine officers who have been on Shipping Board boats?

A. Yes.

Q. Do you know the general custom and practice prevailing with regard to the way they collect their crews?

A. Yes.

Q. Will you tell the Court and jury what was the custom in the past year with regard to permitting a boatswain to act as an agent?

A. When a mate is short a few men, one or two or three, he usually asks the boatswain if he knows anybody that would take their place. The boatswain has got authority to go and get some men. He goes ashore and meets somebody who wants a job and puts them to work.

[fol. 100] Q. Are they employed subject to the approval of the mate?

Objected to as leading.

The Court: Objection sustained. Let him tell about it.

Q. Is there any custom or practice in vogue on American ships with regard to permitting members of the deck crew to go ashore when in port?

A. Yes.

Q. Is there anything with regard to permitting or forbidding visitors to come on board?

A. If there is, they usually put a sign up at the gangway.

Q. If there is no sign up what is the rule?

A. You can just go ahead and visit.

Q. In other words, a sailor's ship is his home?

A. Yes.

Q. He lives there and has his clothes there?

A. Yes.

Q. In a locker?

A. Yes.

Q. And he keeps his stuff locked up?

A. Yes.

Q. And he gets his food there?

A. Yes.

Q. He is supposed to be on board the ship at all times except when he is permitted to be absent?

Objection to.

Objection sustained.

Q. One other question. When a vessel is lying alongside of a vessel that is next to a ship and the outside vessel is 8 or 10 feet lower than the inside vessel and it is necessary to cross the vessel to get to the deck of the outside vessel, what is the usual means provided for getting from one deck [fol. 101] to the other, bearing in mind that the deck level at the place where the contact is made, is 8 or 10 feet?

A. They usually have a gangway, a few planks of special make, about 35 feet long, and they put extensions and life ropes on.

Q. Is that carried with the ship?

A. Yes.

Q. It is something you don't make afterwards; you carry it with you?

A. Yes; it is made.

Q. It is a regular part of the ship's equipment?

A. Yes.

Q. Do you know whether American ships are usually so equipped?

A. Yes.

Q. How many do they have?

A. They usually have two; in case that one gets damaged they can use the other.

Q. Do the ships carry any other gear besides that, for that purpose?

A. They do; they carry a ladder. They carry an accommodation ladder.

Q. That goes over the side to let the visitors on board the boat?

A. Yes.

Cross-examination.

By Mr. Cunningham:

Q. You never saw a 35-foot gangway on a ship in your life, did you?

A. Yes, I did.

Q. What ship?

A. I can't tell you exactly the ship.

Q. What kind of gangplank do they use on big passenger ships?

A. On a freighter they use them.

Q. What freighters can you name?

A. The Luckenbach Steamship Company. You will see one on every ship, 35 feet long and more. You have got to have a boom to lift one of them up. It takes 15 or 20 men to lift one.

Q. They weigh about 3,000 pounds?

A. Oh, no; a crew of about 10 men handles them.

[fol. 102] Q. Do you mean to say they won't weigh around 3,000 pounds?

A. No.

Q. How much should you say they weighed?

A. I don't know exactly, but they probably weigh about 1,000 pounds or so.

Q. Did you ever see such a plank used to bridge the gap between two ships which were moored next to each other one being next to the wharf?

A. Yes; they usually use a solid gangway.

Q. They use a 35-foot gangway?

A. Yes, if they have one.

Q. Did you ever see any such gangplank used in all your experience at sea to bridge the distance between two ships which were 18 or 20 inches apart?

A. It depends on the distance between the two ships.

Q. With a distance of about 18 inches, should you say you ever saw a 35-foot plank used for that gangway?

Objected to, unless the height is named.

Q. And the height or the distance from the boat deck of the ship which sits lower in the water to the saloon deck on the ship which is next to the pier is higher, is only a matter of 8 to 10 feet. Did you ever see a 35-foot gangway used in such cases?

A. No, they would probably use something about 18 feet long.

Q. Would they saw the 35-foot gangway in two?

A. No, they would put a carpenter to work to make one.

Q. A deck carpenter usually makes them of 2 or 3 12-inch planks, does he not?

A. Yes, any thing he can find.

Q. He makes them of wooden planks nailed in cleats about 18 inches apart?

A. Yes.

[fol. 103] Q. And one end of that gangway is usually lashed to the upper deck, the higher deck of the two ships?

A. Yes.

Q. And thel ower end is allowed to rest on the ship which is left unlashed in order to give it a little play so that the ship may swing back and forth with either the tide or with the swash of the waves as some steamer goes alongside?

A. Yes.

Q. That is the practical way it is done, isn't it?

A. Yes.

Q. The rise and fall of the tide has no effect on the play of that end of the plank, because of the fact that it affects both ships alike?

A. Yes; but it has got to be much longer than the distance between the two ships. It has got to be much longer. If they were say 8 feet apart the plank must be 16 feet long.

Q. And if the ships are 18 inches apart on one deck, the upper deck, the distance from the upper deck to the lower deck is about 8 or 10 feet at the most, a plank 12 feet long would be ample, would it not?

A. No, it would not.

Q. Are you sure?

A. Absolutely. It has got to be plenty long enough.

Q. As chief officer did you ever hire any men when you were on a Shipping Board vessel?

A. Yes.

Q. Were they members of the deck department?

A. Yes, they were members of the deck department.

Q. Did you hire them in ports where there was a Sea Service Bureau of the United States Shipping Board?

A. I did in 1920; and about 1918 and 1917 I did.

Q. When men come on board under those conditions they [fol. 104] come through the Sea Service Bureau?

A. Yes, they usually have a slip.

Q. And if they don't have a slip you don't hire them?

A. Yes, I could.

Q. What happens to you if you do?

A. Nothing, because at that time the Shipping Board didn't have very many men ashore, and if they need men on they would say to go ahead and get them.

Q. Do you mean to say that as first officer of a Shipping Board vessel in 1920 you dared to hire men who didn't come with the slip from the Sea Service Bureau, in a port where there was a Sea Service Bureau?

A. Yes.

Q. Did he go on the payroll in those cases?

A. Yes; I would usually make the payroll out.

Q. You hired men without an O. K. of the Sea Service Bureau?

A. No; they were not logged at that time, but they had the necessary papers to show that they were able seamen.

Q. They had to have the papers which showed that they had gone to the Sea Service Bureau and had passed a physical examination, before they could be hired?

A. Not always.

Q. Isn't it a fact that on United States Shipping Board vessels no man can pass the Shipping Board service until he shows himself free from venereal disease?

A. Yes; he is supposed to.

Q. And that is one of the reasons why the Sea Service Bureau exists?

A. No, that is not the only reason.

Q. Isn't that one of the reasons?

A. No.

Redirect examination.

By M. Axtell:

Q. It is true that the Supreme Court of the United States has declared selection as to the thing that counsel is talking about?

[fol. 105] Objected to.

The Court: The witness has not qualified on the law.

Q. Isn't it a practice on the part of merchants that steamship owners in the Pacific Ocean and American steamship owners on the Atlantic coast try to prevent officers from selecting their men, and to compel them to take men from a Sea Service Bureau?

Objected to on the ground that the witness is not qualified to answer.

Q. And that rule has never been fully put into effect, has it?

A. It has not.

Gunner Peterson, being duly sworn and examined as a witness for the plaintiff, testifies:

By Mr. Axtell:

Q. What is your occupation?

A. Boatswain or able seaman or anything like that in any department on deck.

Q. How long have you been going to sea?
A. About 18 years.
Q. How many years have you been a boatswain?
A. I guess about 2 or 3 years.
Q. How many Shipping Board vessels have you been on?
A. I guess about 8 or 9; the "Saratoga," a Hog Island built boat, the "Alfonsonia," another Hog Island built boat, and the "Andrew Jackson," a Barber Line boat.
[fol. 106] Q. You mean operated by the Barber Line?
A. Yes, operated by the Barber Line, a Shipping Board vessel; the "Pleiades," a small boat of the Luckenbachs.

Objected to.

The Court: Objection sustained. Don't lead him.

Q. What is the tonnage of the "Pleiades"?
A. About 4,000 tons or 4,500.
Q. Tell us what other ships you have been on?
A. Of course, if I should tell them all, it would take a long time, but I guess I have been in about 200 ships. That is about all the Shipping Board boats, though.
Q. Has there been any custom or practice in those vessels including the Shipping Board boats of sending the boatswain to get men for the deck department when there would be one or two men missing? Yes or no?
A. Yes.
Q. Tell the Court and jury what is the practice, according to your experience.
A. In the "Andrew Jackson," when I was in her, I went with her to the Far East and I went and got my men from the Sailors' Union. I was sent up there to get the full crew, and I went and got them. That was in 1920.
Q. You are a Union man yourself?
A. Yes.
Q. What is the custom generally?
A. In the other ships I have been in, if there are one or two men short when the ship is ready for sea, the mate generally says, "Will you go ashore and find a man?" That is at the time of the sailing day that the boatswain goes ashore and gets one or two men.
[fol. 107] Q. Does it often happen that after your ship is ready you find a man missing?

A. That happens every day in the week; one or two men, and we have to go out and get a man often for a ship when the sailing day comes; they have to go out and get men.

Objected to.

Objection sustained.

Mr. Arndt: That is all.

Cross-examination.

By Mr. Cunningham:

Q. As a matter of fact, they send word to the Sea Service Bureau first that they need men?

A. When the ship first comes into port.

Q. And the Bureau sends word to your Seamen's Union that they need so many men?

A. Yes, but not all the time.

Q. And the Union sends men over to the Sea Service Bureau?

A. Yes.

Q. And after they have passed the Sea Service Bureau they present themselves at the ships, with their credentials, don't they?

A. Yes, then they go down there.

Lon Sorensen, being duly sworn and examined as a witness for the plaintiff, testified:

By Mr. Arndt:

Q. What is your occupation?

A. I sail as beginning as a sailor.

Q. How old are you?

A. 39.

Q. How long have you been going to sea?

A. About since 1911; about 18 years.

[fol. 116] Q. How much of the time have you been home?

A. Oh, about a year or a year and a half.

Q. Have you been in any Shipping Board boats?

A. I have been in four of them. The last one was the "Saugerties."

Q. What is her tonnage?

A. About 9,000 tons; and I was in the "Kittygan," a Hog Island ship, and I was in the "Lake Butler" and I was on the "Orleans."

Q. Any other Shipping Board boats that you remember?

A. No.

Q. Have you been on other American vessels?

A. Yes, I was on the "Luckenbach."

Q. Has there been while you have been going to sea as a sailor any custom or practice in vogue of permitting or sending the boatswain ashore to get men for the deck department?

A. Yes; I was hired in 1920 by the boatswain on a Shipping Board ship, the "Kittygan."

Cross-examination.

By Mr. Cunningham:

Q. You went through the Sea Service Bureau first?

A. Yes, I went right on board and worked.

Q. Did you sail that same day?

A. No, we didn't sail the same day.

Q. When did you sail?

A. About 4 days later, in 1920.

Q. You were never O. K'd by the Sea Service Bureau?

A. If I was, I must have been on board the ship when I signed on, because I didn't go in the office.

Q. When was that?

A. That was in 1920.

Q. Where?

A. In New York.

Q. The other cases when you signed on Shipping Board boats, did you go to the Sea Service Bureau first?

[fol. 109] A. Well, sometimes, when a Sea Service boat is in port.

Q. Where have you signed on in these cases where you signed on Shipping Board boats?

A. I signed in Mobile in the "Saugerties."

Q. You went through the Bureau then?

A. Yes.

Q. They examined you physically?

A. Yes.

Q. Where did you ship on other boats?
A. The "Lake Butler."
Q. You went through the Sea Service Bureau then?
A. No, I went right on board the ship.
Q. You expected to?
A. Yes.
Q. You got by without going to the Sea Service Bureau?
A. Yes; I shipped from a Shipping Office; a shipping master in New York sent me right on board, "Caverina."

Redirect examination.

By Mr. Axtell:

Q. There are times when the Sea Service Bureau can't get men?

Objected to on the ground that the witness is not competent.
Objection sustained.

Q. They have not got them?

The Court: What does he know about it?

By the Court:

Q. What do you mean about the lack of ability of the Shipping Board to get men?
A. In Mobile——
[fol. 110] Q. What do you know about it?
A. At the present time it is very good.
Q. They can get all the men they want at present?
A. Yes.

By Mr. Axtell:

Q. In 1920 how was it?
A. They put anybody they could pick.
Q. There was a big strike in 1920 and wages dropped about 30 per cent., didn't they?
Objected to.

By the Court:

Q. Did you ever ship any men in Jacksonville, yourself?
A. No, sir.

Q. Did you ever ship yourself from Jacksonville?

A. No, sir.

Q. Do you know anything about the number of men that can be obtained in Jacksonville?

A. Yes.

Q. How do you know?

A. I know that in the summer time we can ship at almost any time.

Q. Were you ever there?

A. Yes, I was in Jacksonville.

Plaintiff rests.

Mr. Cunningham: I will reserve my motion till a little later.

[fol. 111] TESTIMONY FOR THE DEFENDANT

IRVING L. EVANS, being duly sworn and examined as a witness for the defendant, testifies:

By Mr. Cunningham:

Q. You are at present one of the vice-presidents of the United States P. & I. Agency of the Shipping Board?

A. I am.

Q. Located at 45 Broadway?

A. Yes.

Q. Have you been such for the past 4 years?

A. That is correct.

Q. Is that one of the agencies which has to do with the investigation of injury matters and cargo claims?

A. It is.

Q. Prior to that time were you connected with the Shipping Board?

A. I was.

Q. In what capacity were you connected with the Shipping Board?

A. I was the foreign director of their Recruiting and Training Service which had to do with the seeing of officers and men both licensed and unlicensed and placing the officers and men on ships throughout the United States.

Q. Did the matter of the Sea Service Bureau fall under your jurisdiction?

A. Yes; that was part of the service of which I was the head.

Q. Will you describe the Sea Service Bureau?

A. May I be permitted to describe the service to show what it constituted?

Q. Yes.

A. The Recruiting and Training Service for the Shipping Board——

Mr. Axtell: I object; that is too general.

Objection overruled. Exception.

[fol. 112] A. (Continuing:) —maintained navigation and engineering schools at some of the leading universities and colleges of the United States, where they taught navigation to officers and engineering to men who had become engineers, and for men who had a license already and wanted a higher grade of license. In addition to the navigation and engineering schools we had special schools at the Westinghouse and General Electric plants, where we sent licensed chief engineers and a few licensed first assistant engineers who were qualified by experience, and were picked because of their expert knowledge and training, and they were sent there to study turbine engines.

The Court: We have gone far afield. We want to get down to this case.

Mr. Axtell: I move to strike out that answer as not material or relevant.

The Court: I will strike it out.

Q. In the course of developing that service did you also develop a service with reference to the men known as able seamen and ordinary seamen?

A. Yes; and that was the Sea Service Bureau.

Mr. Axtell: I object, that the witness is not qualified to answer.

Objection overruled.
Exception.

Q. When was that service developed?

A. It was established during the war and had offices in all the principal American ports for the purpose of placing men on Shipping Board vessels.

Objected to.

[fol. 113] By the Court:

Q. What were you at that time?

A. I was the foreign head of their work and had charge of the establishing of those offices and maintaining them, and hiring all the men to run them and what men should work them from each office.

The Court: Objection overruled.

A. (Continuing:) The service was that we maintained an office in each of these principal ports where we had waiting rooms for the men to come in and wait for vessels, and as the officers of ships wanted a crew the agent or manager of the office was notified and he selected and sent to the ship the men for the positions which he had been asked to fill.

By Mr. Cunningham:

Q. Was there any regulation which governed the officers, master or chief mate of the ship, with respect to filling vacancies on his ship?

A. Yes.

Q. What was it?

Mr. Axtell: Objected to on the ground that it is not shown that that was in effect in Jacksonville at that time.

By the Court:

Q. Were they in effect in 1920?

A. Yes.

Q. Generally?

A. Generally.

Objection overruled.

[fol. 114] By Mr. Cunningham:

Q. Was there a Sea Service Bureau in 1920 in service in Jacksonville, Florida?

A. Yes.

Q. Who was at the head of that Bureau?

A. Mr. C. W. Sanders.

Q. Is he in the room now?

A. Yes.

Q. Was there a regulation which governed the masters of ships in the matter of filling vacancies in their crews?

A. Yes; to the effect that it applied to the companies as well as the officers of the ship. The companies were notified that they should not permit the officer or master of any Shipping Board vessel to employ any men through any agency or source other than the Sea Service Bureau. That applied to all officers and men except the master.

Q. So that under the regulations of the Shipping Board to the master the personnel of the crews had to come through a Shipping Board Sea Service Bureau where there was a Sea Service Bureau at any point?

A. Yes.

Q. And that was true of Jacksonville, Florida, in 1920?

A. That is correct.

Cross-examination.

By Mr. Axtell:

Q. Were you ever in Jacksonville?

A. Many times.

Q. Were you there in 1920?

A. Yes.

Q. Were you there working in the offices there?

A. No, sir, I had charge of the foreign headquarters. There was an office in New York and one in Washington.

Q. Have you ever been an officer in the American Merchant Marine?

A. Yes.

[fol. 115] Q. How long?

A. I hold an unlimited master's license for ocean steam vessels.

Q. Did you serve?

A. I served for 14 years at sea, from apprentice boy to master.

Q. Where did you come from?

A. Southern Maryland, St. Mary's County.

Q. Did you ever send a boatswain ashore to get a man for you?

A. I believe I have, yes.

Q. When the man has come on board on the boatswain's recommendation, you have hired him?

A. If he had the qualifications that I thought he should have as an officer of the vessel.

Q. You are familiar with the labor situation that existed in 1920 and 1921?

A. Yes, I am quite familiar with it.

Q. Up to 1921 there was more or less labor shortage?

A. No, sir, we had at all times about 800 to 1,000 men available extra, whom we had trained on the training ships. At times there was some shortage in 1919.

Q. There was a time when there was a terrible strike and the engineers and officers all went out because some men were getting $33 and some of the other officers were only getting $31?

Objected to.

The Court: You cannot go into this line of questioning. We are not trying any strike.

Q. The sea Service Bureau was formed to combat the organization of the officers and men, was it not?

A. It was not; it was formed during the war for the purpose of seeing that no aliens got upon the ships carrying troops and supplies for us.

Q. Wasn't there a man by the name of Howard in Boston [fol. 116] that started the Sea Service Bureau?

A. Mr. Howard during the war was the foreign head of this same service, in which I succeeded him, and I was associated with him in the formation of it.

Q. The purpose was to get young Americans to go to sea?

A. Yes; at the time it was established, yes.

Q. You did have offices in New York and some of the principal ports of the United States?

A. Yes.

Q. What are they?

A. I can't tell you because I have nothing to do with it, but I can tell you what they were in 1920.

Q. There have been times when the Sea Service Bureau couldn't get men and they had to send to the Union halls to get them?

A. There may have been times before 1920, yes; during the war there were.

Q. Up to that time the Shipping Board adopted a rule to permit Union delegates to visit the men on board the ships?

A. That has never been prohibited.

Q. They have always had the right to do that?

A. They have always had a right to visit their members on the ships.

Q. They have been given passes?

A. They have been given passes for that purpose always, during the war.

Q. It has been the practice to allow other union men to visit their comrades on board the ships?

A. Not generally; some persons were permitted to visit the ship who were issued passes for that purpose.

Q. But if you were a reputable person and wanted to visit somebody on board a ship, you would go down, and [fol. 117] if you were properly introduced to the watchman at the dock you could go on board?

A. No, sir.

Q. Not if you were properly introduced to the watchman at the dock?

A. I don't know what you mean by being properly introduced.

Q. There might be a pass required?

A. The man would not be permitted to go on board if he had not a pass.

Q. Would an officer of the ship be permitted to take a man on board the ship with him?

A. If he had proper credentials, yes.

Q. Would an officer have to go to the Sea Service Bureau to get a pass?

A. I am not in the operating department. I am handling the personnel only.

Q. When you were going to sea how was it?

A. I don't think I ever had any difficulty in taking a friend on board a ship if I wanted to.

Q. The boatswain is a petty officer, isn't he?

A. Yes.

Q. You know that he has been defined by the Courts as an officer, don't you?

A. He is a petty officer, yes.

Q. And the boatswain has authority to take a visitor on board a ship if he is a seaman and works, and of good character, to visit him in his room?

A. I don't know about that; that would depend on what the officer had permitted on a ship.

Q. In your experience in American vessels going to foreign ports and into ports of the United States on the coast, when the men are not permitted to go ashore, what is ordinarily done to apprise them of the fact?

A. Sometimes a notice is put up and sometimes the man [fol. 118] at the gangway prevents them from going ashore when they come to the gangway.

Q. About men coming on board a ship, where a ship is lying at the dock where there are watchmen at the ends of the piers, all access to the ship must be through the watchman's gate; what is the rule about allowing them to come on board?

Objected to as incompetent and irrelevant.

The Court: He may answer.

A. It depends on where the ship is lying, whether it is at some wharf where visiting is prohibited or where there is a watchman of some shipyard or Navy Yard. It depends on the conditions.

Q. If visitors are not permitted to come on board a vessel and visit the crew is it customary to put up a notice to that effect?

A. Sometimes that is done and at times it is not done. It depends on the circumstances and conditions.

Q. In other words, a rule may be given verbally or in writing?

A. Yes.

Q. But if there was no rule the understanding would be that a seaman could have visitors on board?

A. I would not say that that would be the understanding.

Q. Certain kinds of visitors are prohibited from going on board, such as runners for boarding houses, sellers of clothing and solicitors, etc.?

A. They are still, so far as possible.

Q. But that rule does not apply to the ordinary longshore visitor or seamen?

A. I should say yes, it does.

Q. Suppose two vessels are lying at the same pier, or three or four or five, they might be in Buenos Aires or New [fol. 119] York or Brooklyn or Jacksonville. Should you say there would be any rule ordinarily against the crew or some of the crew of one ship talking with the other one when they are not on duty?

A. No.

Q. They would be permitted to do that?

A. Yes; ships lying alongside of each other frequently visit back and forth.

Q. In other words, in American shipping today we are trying to give the men a pleasant place to live and make their quarters rather harmonious and try to make life a little pleasanter for them?

A. Yes.

Q. That was part of your work in the Sea Service Bureau, to induce Americans to go to sea, with the idea that the sea life was good for men?

A. I spent about five years of my best efforts to get our ships manned by Americans and to improve their conditions on board ship.

Q. And now you are a member of the United States P. & I.?

A. I am a vice-president.

Q. That is to defend these suits?

A. No; we deal with them and have to represent the Government in handling them.

Q. You are in control of the corporation by whom Mr. Cunningham is employed?

A. Mr. Cunningham is not employed by the corporation that I am in.

Q. Your interest in this case is to help the defendant to win, isn't it?

A. No, I am here to tell the truth about what I am asked.

Q. You are here as a witness for the defendant, and you are not under subpœna nor are you paid for your services?
A. No, sir.

[fol. 120] CHARLES W. SANDERS, being duly sworn and examined as a witness for the defendant, testifies:

By Mr. Cunningham:

Q. What is your present business?
A. I am assistant director of the Bureau of Operations in charge of the Sea Service Bureau.
Q. That is for the United States Shipping Board?
A. Yes.
Q. Were you connected with the Shipping Board in August, 1920?
A. Yes.
Q. Where were you located?
A. I was local manager of the Sea Service Bureau at Jacksonville, Florida.
Q. What were the regulations with reference to supplying sailors on ships of the Shipping Board for vacancies; the same as today?
A. Yes.
Q. What were the regulations with reference to supplying men for the ships?

Mr. Axtell: I move to strike out "the same as today."

Motion denied.

A. (Continuing:) A ship arrives at the dock; the officers give the requisition to the master, the master gives it to the—this was in those days; not now, remember—they give the order to the managing operator, and the managing operator in turn would give it to the Sea Service Bureau.
Q. When you speak of the managing operator you mean that particular company that was operating the particular ship for the United States Shipping Board at that time?
A. Yes, for the Fleet Corporation.
[fol. 121] Q. Do you remember the American Shipping Corporation that was one of the corporations which was operating from Jacksonville, at that time?

A. Their home office is in "Jacksonville."

Q. They operated the ship "Jacksonville" at that time?

A. Yes, they took it from the ship yard.

Q. Do you remember the "Jacksonville" being at Jacksonville while you were in charge of the Sea Service Bureau there in August, 1920?

A. Yes; I remember the day it was launched.

Q. How were the members of the crew supplied to the "Jacksonville" at that time?

A. They were all through our office.

Q. What was the method adopted by able seamen or ordinary seamen of obtaining a job on the "Jacksonville"?

A. We would come to the office through the operating company, either through their marine superintendent or port engineer. We would select the man and send him to the ship.

Q. The operating company would send word to the Sea Service Bureau that they had been notified that such men were needed for their crew?

A. Yes.

Q. Would those men come to the Sea Service Bureau?

A. If the men were not available in our marine department we used a board, a sort of a bulletin board, and would write up there the number of men that we wanted. If they were not obtainable and didn't come around, we would send out one of our men and he would pick up the men at the sailors' boarding house or the Union Hall.

Q. Did those men that they found have to come to the Sea Service Bureau first?

A. Yes.

[fol. 122] Q. After they came there what was done with them?

A. The card record was made of each man; if an able seaman, the number is A. B. This was recorded on the card which we kept on file of that special seaman, and if approved—if there was nothing against his record, he was sent to the ship.

Q. Do you keep a complete record to show the record of each individual seaman who applied there?

A. Yes.

Q. Was it the regulation to look up these records to see if they were clean?

A. Yes.

Q. Did you go any further with respect to their physical make-up?

A. At that time we did not, not in all ports. In Jacksonville it was not carried on unless the master requested it. If he requested it, we did it.

Q. Did you have a physician to conduct that physical examination?

A. It was handled through the Public Health Service.

Q. That was the method by which Shipping Board vessels in Jacksonville in August, 1920, were provided with men?

A. Yes.

Q. Was there any other way by which the master or the mate directed by the master was permitted to fill any vacancy in his crew?

A. That was on what we call the pierhead jump; at the sailing hour. Our office might be closed and the master had authority to have his officers select their own men, which he would make a record of and give to the pilot going down the river, which would be mailed back to us.

Q. In other words, just at the point of sailing, if he found a vacancy or two in his crew, then he had that authority, to take someone, and send a record of that to your office?

A. Yes.

[fol. 123] Q. That was the only exception made to this routine?

A. Yes.

Cross-examination.

By Mr. Axtell:

Q. You testified in another case in which I was counsel, did you not?

A. Yes; one or two or three.

Q. Was that the Beaton case?

A. No, that was the Lynch case.

Q. Were you in Jacksonville then?

A. When?

Q. At the time you testified to the circumstances in that case?

A. No.

Q. You were in Philadelphia, weren't you?
A. Yes.
Q. And now you say you were in Jacksonville?
A. Yes.
Q. Those accidents were the same year, were they not?
A. I don't know; I can't remember.
Q. You had something to do with the black list, the deferred list?
A. We had nothing to do with a black list.

The Court: I want you to understand that my orders here must be obeyed. Confine yourself to this case, and if you repeat this I shall allow Mr. Cunningham to withdraw a juror.

Mr. Axtell: I would not have asked these questions had I not thought it was all right. That is all.

Mr. Cunningham: I will first read the deposition of John K. Littlefield, taken pursuant to notice, on December 12, 1924, at Baltimore, Maryland (reads direct examination of said deposition).

Mr. Axtell: I do not think I need to read this cross examination.

[fol. 124] The Court: If you want to read it, now is the time.

Mr. Axtell: I will read one question on page 12.

Mr. Cunningham: I will read all that Mr. Axtell does not read.

Mr. Axtell (reading):

"Q. You did not supervise the erection of any of the appliances in connection with the gangway plank?" * * *
"A. No more than passing over it."

(Take in the rest of the question and answer.)

Mr. Cunningham: I will read the rest of the cross examination.

(Mr. Cunningham reads also the redirect examination.)

DEPOSITION OF J. K. LITTLEFIELD

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK, DECEMBER 12, 1924

JOHN JOHNSON, Plaintiff,

against

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, Defendant

Deposition of the witness J. K. Littlefield, taken pursuant to the attached notice before me, Lafayette P. Temple, a notary public in and for the city of Baltimore, State of [fol. 125] Maryland, on this 12th day of December, 1924, at the offices of Messrs. Coleman, Fell, Morgan & Brune, Citizens National Bank Building, Baltimore, Maryland, beginning at 2:30 o'clock, p. m.

Present in behalf of the plaintiff: Silas B. Axtell (by Mr. Harry Perlin).

Present in behalf of the defendant: Messrs. Coleman, Fell, Morgan & Brune (by Mr. Frederick Brune).

(NOTE.—It was agreed by and between counsel for the respective parties that the signing, sealing and certification of this deposition should be waived.)

Thereupon—

JOHN K. LITTLEFIELD, a witness of lawful age, produced on behalf of the defendant, having been first duly sworn to tell the truth, the whole truth and nothing but the truth, was examined and testified as follows:

Direct examination.

By Mr. Brune:

Q. Please state your full name, your age and your occupation.

A. My name is John K. Littlefield; age, forty-five; occupation, marine officer.

Q. You are now second officer of the "Thomas P. Beall"?

A. Yes.

Q. For how many years have you been following the sea?

A. About thirty-seven years.

Q. How long have you been an officer?

A. About twenty-three years, maybe a little longer.

Q. On August 1, 1920, were you or not first mate of the steamship "Jacksonville"?

A. Yes.

[fol. 126] Q. And at that time she was in the port of Jacksonville, Florida?

A. Yes.

Q. When did you join that vessel?

A. As near as I can recollect, I took charge as mate about the 28th of July. I will not be absolutely certain about that; it was either the 28th or the 29th.

Q. Where was the "Jacksonville" lying at that time?

A. She was lying alongside of the steamship "West Compo," at Commodore's Point, Jacksonville. I think it was the Jacksonville Outfitting Company or some such name.

Q. And the "West Compo" was lying alongside of the bulkhead at that plant, was she not?

A. Yes.

Q. At that time it was a part of your duty, was it not, to see that the crew was a full crew?

Objected to as leading.

A. Yes.

Q. Who was the boatswain at that time?

A. I think his name was John Anderson, or John Johnson, some such name; I couldn't tell you what his name was because I don't recollect.

Q. Does the name Carlson seem familiar to you?

A. That is th- eman, Carlson.

Q. On August 1, 1920, did the "Jacksonville" have a full crew?

A. To the best of my knowledge, yes. I do not recollect that she has any.

Q. If any one had been charged with the securing of additional men, who would have had that duty?

A. Myself.

Q. Did you instruct any one to try to procure additional members of the crew?

A. I did not.

Q. Do you know the plaintiff, John Johnson?

A. No, sir.

Q. You never saw him on board the "Jacksonville"?

A. No, sir.

[fol. 127] Q. Had you been ashore on the evening of August 1, 1920?

A. Yes.

Q. About what time did you come back to the ship?

A. I did not come back until morning.

Q. At the time when you joined the "Jacksonville," where was she lying?

A. Alongside of the steamship "West Compo," moored alongside of her.

Q. Was there any means of passing from one ship to the other at the time you joined the vessel?

A. Yes, there was a gangway from our boat deck on top of a vegetable box, which sat on the starboard side of the "Jacksonville," boat deck, on top of this vegetable box, if I remember right. Of course I could not tell you the exact dimensions of the plant, but I should judge it was from twelve to fourteen inches, three planks from the top of the vegetable box to the bridge deck of the "West Compo," with some cleats nailed across them.

Q. About how many cleats were there, do you remember?

A. That I could not say, but I judge they were two feet apart, or something like that.

Q. How was this gang plank secured?

A. Tied with ropes to the "West Compo."

Q. How long did it remain in that position?

A. It remained in that position—well, it was there when I joined the ship and it remained there until we moved the ship up alongside of another ship called the "Red Mountain," some few days after that.

Q. That is after the accident to Johnson?

A. Yes, we were taking oil and there was not water enough where we lay, so we moved the ship alongside of a ship called the "Red Mountain."

[fol. 128] Q. Was there any work being done on board the "Jacksonville" while you lay alongside of the "West Compo"?

A. Yes, she was undergoing repairs.

Q. Was there more than this one gangway between the "Jacksonville" and the "West Compo"?

A. No, sir.

Q. About how many men would you say passed over that gangway each day during the time that you lay alongside of the "West Compo"?

A. There was our full crew and I should say there must have been at least sixty men working on the ship. Of course I could not say definitely.

Q. Sixty men in addition to the crew, do you mean?

A. Yes, in addition to the crew. They had all the deck winches up and undergoing repairs in the engine room to her steering engine and they had her rudder out.

Mr. Perlin: I move that the last statement be stricken from the record as irrelevant.

Q. How many men were there in that crew?

A. If I remember right, there were thirty-seven men, but I will not be certain of that. I could tell you if you will let me count them up.

Q. That will not be necessary, I do not think. Do you know of any accidents that happened in connection with that gangway?

A. Only this man that I understood slipped off of it, fell off of it.

Q. That is John Johnson, the plaintiff?

A. Yes.

Q. Was any change made in the rigging of that gangway after that?

Mr. Perlin: I object to that as irrelevant.

[fol. 129] A. No, sir.

Q. How much longer did the ship lie there?

A. I could not tell you just the number of days. I think she lay there alongside of that ship about four days after that before we moved up to the next ship.

Q. Was there any hand rails, or anything of that sort on this gangway?

A. Only a heaving line between the two ships.

Q. Do you remember how that was rigged?

A. That was tied from the rail of the "West Compo" down onto the boat davit or alongside of our rail on this vegetable box.

Q. And it was tied in such a way that any one using the gangplank could hold on to the heaving line?

A. Oh, yes, if they wished to.

Q. About what angle was that gangway on?

A. We were loaded and the "West Compo" was light, and this gangway went from the top of our boat deck onto this vegetable box. It was about that high, I guess (indicating).

Q. Four feet high?

A. About three and a half feet or four feet high. And it went from the top of that and I should not judge it was over fifteen degrees angle.

Q. Where was the upper end, on your boat or on the "West Compo"?

A. On the "West Compo."

Q. About what was the length of the gangway?

A. I should judge it was about ten or twelve feet long.

Q. And you know of no other accident that occurred in connection with that gangway?

A. No, sir.

Q. You never saw John Johnson after the accident, did you?

[fol. 130] Mr. Perlin: That is objected to as irrelevant.

A. No, sir.

Q. When is your ship, the "Thomas P. Beall", to sail?

A. Tomorow.

Q. Where is she bound?

A. Boston.

Q. Where will she go from there?

A. From there to New York and then to the Pacific Coast ports.

Q. About how long do you expect the voyage to take?

A. Usually about three months.

Q. You only visit New York as a port of call?

A. Yes.

Q. You will not be there but a day or two?

A. Sometimes one day and sometimes as high as four or five.

Cross-examination.

By Mr. Perlin:

Q. You say you never saw John Johnson?

A. No, sir.

Q. Were you on board the vessel on August 1, 1920?

A. Yes.

Q. Did I understand you in answer to one of Mr. Brune's questions to say that you were on shore the evening of that day?

A. Yes.

Q. When did you leave the vessel?

A. Some time after supper; I can not say just the hour.

Q. When did the accident to Johnson occur?

A. That occurred some time in the early evening, before dark. I could not tell you the exact hour of that because I don't remember.

Q. Where were you at the time of Johnson's injury?

A. At the time he was hurt I was ashore.

Q. How long was this vessel docked alongside of the [fol. 131] "West Compo" before the injury to Johnson?

A. That I could not say because she was there when I joined the ship and I do not recollect how long she had been there, several days, I think.

Q. Did you sign the articles at Jacksonville?

A. Yes.

Q. Was this gangplank already erected when you joined the vessel?

A. Yes.

Q. You do not know, then, who erected the gangplank?

A. No, I do not. I suppose the officer on relief, or else, perhaps he oversaw it. I could not say who erected it because it was there when I came on.

Q. You did not supervise the erection of the gangplank?

A. No, sir.

Q. You did not supervise the erection of any of the appliances in connection with the gangplank or any of the attachments thereto, did you?

A. No, sir.

Q. You never personally examined the gangplank to see that it was properly put up?

A. No more than passing over it.

Q. It was not your duty to examine minutely the manner in which this gangplank was constructed, was it?

A. It was my duty if I saw anything that was neglected or anything that was not proper to see that it was put in condition.

Q. But you never made any definite examination of the gangplank?

A. No more than looking at the gangway after the accident. I did not see anything to make any change in that I saw.

Q. How many days after you joined the vessel did this accident occur?

A. It was only a few days from the time I went down there. I think I relieved Mr. Irwin, either on the 27th or [fol. 132] the 29th of July.

Q. Mr. Irwin was your predecessor?

A. Yes.

Q. You did not return to the "Jacksonville" until the morning of the 2nd of August, is that correct?

A. The following morning, yes.

Q. Immediately after the accident to Johnson, you do not know what changes were made to the gangplank?

A. No, none as far as I could see.

Q. If any changes were made you do not know about them?

A. No, sir.

Q. In other words, changes might have been made without your knowledge?

A. Not very well, no.

Q. Who was in charge of the vessel when you were ashore?

A. Captain Pindar, the night deck officer.

Q. Was there anybody else in charge?

A. Captain Pindar was the man in charge. At that time he was the responsible man. All other officers had the privilege of going ashore.

Q. A change in the manner in which this gangplank was laid might have been made under the Captain's orders during your absence, isn't that correct?

A. Certainly, the officer in charge of the ship could make any changes he saw were necessary.

Q. The point I am getting at is this, that it is possible for you to have been ashore and during your absence the Captain may have ordered some change in the laying of the platform after the accident to Johnson?

A. I could not say. None was ever reported to me and I never saw any.

Q. The captain would not have to report it to you if he did make a change, would he?

[fol. 133] A. If he made any change and an accident happened from it, it would have been his duty to report it, yes. He was supposed to give me all reports in the morning of whatever happened during the night.

Q. Who is Captain Pindar?

A. Captain Pindar was relief officer for the American Shipping Corporation that operated "Jacksonville" at that time.

Q. When you refer to Captain Pindar, do you refer to the master of the vessel?

A. Oh, no, sir. I refer to the night deck officer. The master of the vessel was Captain A. J. Pollard.

Q. Did Captain Pindar have anything to do with discharging or employing men?

A. None whatsoever.

Q. During your absence, could he discharge a man?

A. No, sir.

Q. During your absence could the master of the vessel, Captain Pollard, discharge a man?

A. He could if he was present at the ship, but he was not present.

Q. Captain Pollard was not present at that time?

A. No, sir.

Q. How could you get ashore from the "Jacksonville"?

A. We went up a ladder onto our bridge deck and then you stepped on this vegetable box. I forget just what you do to step up on the vegetable box. Then you went from this vegetable box on this gangway over onto the "West Compo."

Q. In other words, it was necessary to cross the "West Compo" for you to get ashore?

A. Yes.

Q. When did the vessel sail from Jacksonville?

A. If I remember right, it was on August 21st.

[fol. 134] Q. That is about twenty days after the accident to Johnson?

A. Yes.

Q. Did the same crew that signed on the vessel when you signed on sail with it on the 21st?

A. Yes.

Q. Exactly the same?

A. This boatswain that was there at the time, I discharged him before we signed on the ship's articles. He and one or two sailors. Then I got a new boatswain and one or two more sailors and the same crew that signed on the ship's articles went out.

Q. When did you discharge the boatswain?

A. About two or three days after this accident.

Q. Why did you discharge him?

A. Because he was not capable of doing his duty, he was drinking.

Q. Did you discharge anybody before you discharged the boatswain?

A. I don't think so. I would not say whether I discharged the sailors before I discharged him or not. I know at the time I discharged him I discharged a sailor and before I discharged him I think I also discharged a sailor.

Q. That was before you discharged the boatswain?

A. I think so, but I will not be positive.

Q. At the time of the accident, then, you were one or two men short?

A. No, sir, this was after the accident. The ship had a full complement of crew and officers when I went aboard of her, excepting myself and the first assistant who went down to join her.

Q. Did you authorize somebody to secure another man for you?

A. No, sir, I never did.

Q. Did you have any trouble with these sailors before you discharged them?

A. No, sir.

[fol. 135] Q. Then why did you discharge them?

A. Because they were not doing their work. If you wish to know the trouble I will tell you.

Q. I would like to know it.

A. This boatswain and some of the crew got to playing cards and drinking, as I understood. I watched him the

first day and it was about half-past one or a quarter of two when they were playing cards and I called him back and told him to get the men and get to work, that we worked proper hours there and I did not want any card-playing in working hours. He went forward to tell the men and they told him that he could go to hell, that he and the mate could go to hell, that they would turn to when they got through playing cards.

Q. This was before the accident?

A. After the accident, two or three days afterward.

Q. When you first joined the vessel did you have that same trouble, when you started to watch them?

A. I had only been there a day or two. I discharged no man until I saw that it was justifiable.

Q. Did you report to anybody your dissatisfaction with these men?

A. I did not, not to my knowledge, any more than I might have mentioned the fact to the second or third officer.

Q. It is possible, then, that they may have construed from your casual remark that you were in search of a man to replace them?

A. There was nothing said about discharging the men until, I think it was, three or four days after the accident.

Q. When Johnson went on board there to seek employment, did he ask for you?

[fol. 136] Mr. Brune: That is objected to. There has been no testimony that Johnson went on board seeking employment.

A. I never heard any question about it or never heard that he ever asked for me; I never heard that he ever asked for any officer.

Q. When he went on board you were not there, were you?

A. No, sir.

Redirect examination.

By Mr. Brune:

Q. You had seen this gangplank before the accident, had you not?

A. Yes.

Q. And you saw it after the accident?
A. Yes.
Q. Did you notice any change in it at all between the two times when you saw it?
A. No, sir.
Q. From your experience as a seaman, would you say that this gangplank was or was not rigged in the ordinary manner?

Mr. Perlin: That is objected to as the witness has not been qualified to answer the question.

A. I considered that the gangway was safe.
Q. Was it or was it not rigged in the usual manner?
A. It was rigged in the usual manner.

(Testimony of witness concluded.)
(Signature of witness waived by consent of counsel.)

[fol. 137] FRANK H. FLOYD, being duly sworn and examined as a witness for the defendant, testifies:

By Mr. Cunningham:

Q. Where is your home?
A. Mayport, Florida.
Q. Is that near Jacksonville?
A. 23 miles away.
Q. Have you come here now on my request by telegraph to testify in this case?
A. Yes.
Q. Your expenses are being paid through our offices while you are here?
A. Yes.
Q. Both your traveling expenses and for your time?
A. Yes.
Q. You testified in this case before a United States Commissioner in August last year?
A. Yes.
Q. Were you connected with the steamship "Jacksonville" in August, 1920?
A. I was deck engineer of the steamship "Jacksonville."
Q. How long had you been deck engineer of that ship on August 1st, 1920?

A. I signed on in July.

Q. Where were you when you signed on?

A. At the Municipal office at Jacksonville, Florida.

Q. So that the ship was at Jacksonville in the early part of July and all through August?

A. She was in there in July; I don't know about all through August.

Q. So early in July you joined the ship?

A. Yes.

Q. On August 1, 1920, do you recollect hearing about an accident to the plaintiff Johnson?

A. Yes.

Q. Did you see it or not?

A. No, sir, I did not.

Q. As far as the actual accident is concerned, you know [fol. 138] only what you heard?

A. Only by hearsay; that is the only way I knew anything about the accident.

Q. From the time you joined the ship up to the time of the accident to Mr. Johnson were you one of the crew of the "Jacksonville"?

A. Yes.

Q. How long did that last?

A. I don't remember exactly.

Q. When did you join the ship?

A. In July.

Q. You don't remember whether it was the middle part or the early part?

A. I don't remember the date, no, sir.

Q. Had you been on the ship upwards of a week or ten days?

A. Yes, sir; a week or more; I would not state the exact number of days.

Q. What was going on with respect to the ship and machinery at the time?

A. They were repairing the winches, the winches which they loaded the car on and off the ship.

Q. Those winches are located on which deck?

A. On the forward well deck, on the saloon deck there were two, and on the after well deck there were four.

Q. Were all those winches under the process of repair?

A. Yes.

Q. Who was repairing them?

A. I know the name of the foreman of the job, Mr. Treadwell, from the Jacksonville Outfitting Yards.

Q. Was there anything being done to the main engines of that ship?

A. I don't know; I was deck engineer.

Q. Did you at any time when the winches were being repaired go down into the engine room?

A. I never went below; very seldom.

Q. Do you know whether there was anything being done [fol. 139] toward repairing the steering gear of the engines?

A. I don't know.

Q. How many men were there working on this repair job?

A. Probably 40 or 50.

Q. Where did those men all come from?

A. From the ship yards.

Q. They came from the neighborhood of Jacksonville?

A. They were working at the shipbuilding concern.

Q. Was the dock near the yards?

A. The boat was laying on the dock.

Q. In order to get on the ship those men had to do what?

A. They had to come on board one ship and cross her deck and come aboard a gangplank on to the "Jacksonville."

Q. Was there any other gangplank between the two ships?

A. No, sir.

Q. Do you mean that was the only means of communication between those ships, and so on, to the shore?

A. Yes.

Q. Do you remember the construction of that gangplank?

A. Yes; this gangplank was made of three 10 or 12 inch planks; I don't remember whether they were 10 or 12 inches, and they were screwed together by cleats lashed to the deck of the other ship, and running down fitting on blocks on the deck of the "Jacksonville." This was the saloon deck of the other ship and the boat deck of the "Jacksonville."

Q. The boat deck was the top deck as the ship lay at Jacksonville at that time, was it not?

A. Yes.

Q. And the saloon deck was the nearest deck to the top deck on the other ship?

A. Yes.

Q. You say this gangplank consisted of three planks which were nailed together with cleats?

A. Yes.

[fol. 140] Q. How far were the cleats apart?

A. Somewhere around 17 or 18 inches.

Q. How long was the gangplank itself?

A. About 10 or 12 feet.

Q. About what angle did that gangplank rest at in connection with each ship?

A. Approximately a 15-degree angle.

Q. Will you illustrate by your hand about what you mean?

A. About at that angle (illustrating).

Q. Which end of the gangplank was lashed and which end was free?

A. The end of the "West Compo," the other ship, was lashed and the end on the "Jacksonville" was free.

Q. The end on the "Jacksonville" rested on what?

A. On a box.

Q. How was the gangplank lashed at the "West Compo" end of the ship?

A. I don't remember exactly, but I remember seeing it tied there and never noticed it particularly, just passing, and you would hardly notice a small thing like a lashing.

Q. You didn't do it yourself?

A. No, sir, I did not.

Q. Do you know who did put the gangplank there?

A. No, sir.

Q. Did you yourself use the gangplank from time to time?

A. Yes.

Q. Did you pass over it more than once?

A. Yes.

Q. Many times?

A. Yes.

Q. Did you notice other people passing back and forth over the gangplank?

A. Yes.

Q. Both the repair gang and the members of the crew?

A. Yes.

Q. How many members of the crew were there in the [fol. 141] ship?

A. Probably 40; I don't remember exactly.

Q. Did the crew have shore leave at this time?

A. Yes.

Q. Was there any skeleton crew to watch the ship at night?

A. There was always a watch on board the ship.

Q. Except for them, the rest of the crew was free to go ashore?

A. If they wished to, yes.

Q. So that upward of 100 men were using that gangplank going back and forth daily to and from the "Jacksonville" to the shore?

A. I would say I saw 100 men.

Q. About 60 repair men and as many as 40 members of the crew would use it?

A. Yes.

Q. Did you ever see any accident happen in that gangway?

A. No, sir.

Q. Did any other accident happen while you were on the ship in that gangway?

A. No, sir.

Q. Do you remember where the gangway rested on the steamer "West Compo"?

A. It rested on the side of the ship, right on the rail, on the deck; right down on to the deck of the "West Compo." It didn't come up on top of any rail.

Q. That is, illustrating this by the desk where the Court is, do you remember that this would be the deck of the "West Compo" (indicating the top rail)?

A. Yes.

Q. And that the gangplank rested on the deck itself?

A. Yes.

Q. Mr. Johnson testified the other day that the "West Compo" end of the gangplank rested on a rail about 6 inches above the deck, and not on the deck itself. Is his recollection the same as yours?

A. No, sir.

Q. He also said that in order to get on to the gangplank [fol. 142] when you came from the "West Compo" to go

down the gangplank to the "Jacksonville" that you had to climb over this rail, which he says consisted of the top rail and a middle rail. Was that necessary in order to get on that gangplank?

A. No, sir; there was an opening there.

Q. What sort?

A. Well, they placed an accommodation ladder there.

Q. Was it at that part of the other deck—what deck was it on, the "West Compo"?

A. It was the saloon deck.

Q. Was it that part of the saloon deck of the "West Compo" where they rigged an accommodation ladder when they placed it alongside of the ship?

A. Yes.

Q. Will you describe what you mean by an accommodation ladder?

A. That fits on the side of the ship and runs down and is swung over the side of the ship, and we come alongside and a man will come up the accommodation ladder.

Q. Is it the same thing where the people come up along the side of the other ship and step from an accommodation ladder on to the ship?

A. They come upon the accommodation ladder.

By the Court:

Q. And it is swung so that in swinging, when you come to the top, you can go on board?

A. Yes.

By Mr. Cunningham:

Q. When Mr. Johnson says that in order to get on the gangplank or on to the "West Compo" it was necessary to climb up a rail 3 or 4 feet high, his recollection is inac- [fol. 143] curate, according to your recollection?

A. It is.

Q. Have you any doubt in your own mind of your own recollection?

A. No, sir.

Mr. Axtell: I object and move to strike out all this testimony.

The Court: I will strike out anything that characterizes Mr. Johnson's testimony. The rest may stand.

Mr. Cunningham: I will reframe the question.

Q. Mr. Johnson has testified that when you got up to the "West Compo" end of the gangplank it was necessary to climb up over the railing of the "West Compo," which was about 3 or 3½ feet high. Does that change your recollection of the situation of the "West Compo" end of the gangplank?

A. No, sir.

Q. Did the men repairing the gangplank have occasion to carry any tools?

A. Yes, they used their own tools.

Q. How did they carry them?

A. Some in boxes and some in kits, the way most mechanics carry the tools.

Q. You saw these men go back and forth?

A. I know all those men do go back and forth.

Q. When you walk up on that gangplank does it swing or sway in the air at any time?

Objected to.

Objection sustained.

Q. Did you use the gangplank on August 1st, 1920?

A. Yes.

[fol. 144] Q. Did it on that day, did the "Jacksonville" end of it swing clear from that box on which you say it rested?

A. No, it did not.

Q. Will you look at this model which Mr. Johnson has shown us as the way in which this gangplank was rigged? Is that the way in which it was rigged?

A. No, sir.

Q. Did this "Jacksonville" end of the gangplank swing free in the air, suspended by anything, or did it rest squarely on the box?

A. It rested squarely on the box.

Q. Was there a heaving line attached alongside of the gangplank?

A. There was a heaving line on the gangplank, yes.

Q. How was the heaving line rigged?

A. The heaving line was rigged from the rail of the "West Compo" to a boat davit on the "Jacksonville."

Q. Did it pass through any stanchion on the gangplank?
A. No, sir.
Q. Was there any stanchion on the gangplank?
A. No, sir, none.
Q. Mr. Johnson has testified that there was a stanchion there in the position in which you see on this model here. Does the fact that he has so testified change your recollection of the way in which the heaving line was rigged from the "West Compo" to the "Jacksonville"?
A. Not a particle.
Q. How high was that vegetable box which was standing on the boat deck of the "Jacksonville"?
A. I should say approximately 3 feet.
Q. Do you remember how you got up on to the vegetable box where the "Jacksonville" end of the gangplank rested, in order to make the ascent of the gangplank?
A. No, sir, I don't remember clearly about that.
[fol. 145] Q. You may have stepped on some small box?
A. No, I don't remember how I got up there. Little things like that slip your mind in seven years.

Recess until 2 p. m.

Met pursuant to adjournment at 2 p. m.
Present: as before.

FRANK H. FLOYD resumes the stand.

Cross-examination.

By Mr. Axtell:

Q. Have you seen any plan of that ship which had a rail with an opening for the accommodation ladder on the boat deck?
A. No, I have not.
Q. Do you remember seeing any other ship that had an opening in the rail in that place?
A. Besides the "Jacksonville"?
Q. Yes.
A. Yes, sir.
Q. In that particular place?
A. Yes, sir, on the saloon deck.

Q. On which deck did these planks go to on the "Jacksonville"?

A. On the boat deck.

Q. How far from the funnel were they?

A. I don't know the exact distance.

Q. It wasn't very far, was it?

A. Well, not so awfully far; I don't know the exact distance.

Q. And the funnel is in the middle of the ship?

A. On some ships.

Q. I mean from between starboard and port?

A. Yes.

Q. That ship is about 54 feet beam, so it would be 9 feet thick anyway, the stack would?

A. I don't know.

[fol. 146] Q. Do you mean to say you don't know about the stack on that ship?

A. I don't know.

Q. Where did they carry the lifeboats on the "Jacksonville"?

A. On the boat deck.

Q. What deck did the planks go down to?

A. To the boat deck of the "Jacksonville."

Q. Then there were lifeboats there?

A. Yes.

Q. Do you remember there was a boat davit right in near where the planks came down?

A. Yes.

Q. Do you remember that there was a rope tied to the plank from the boat davit?

A. I remember a rope tied to the davit.

Q. Do you remember that there was a rope tied from the plank to the plank on the other side of it?

A. No.

Q. Would you say that it was when you went on Board there before the gangplank was rigged, so that the lower end was suspended in two ropes, or perhaps one rope running from the smokestack guy up to the end of the boat davit?

A. No, sir, I do not.

Q. Do you remember that there was a vegetable box there?

A. I don't remember a vegetable box; there was a box there.

Q. What is a vegetable box?

A. I don't know.

Q. How long have you been going to sea?

A. Approximately two years and nine months.

Q. Did you never see a vegetable box on any ship?

A. I may have.

Q. Did you ever hear of one?

A. I heard of a vegetable box, what vegetables were in.

Q. You are a sailor?

A. No, sir.

Q. You are in the engine room gang?

A. Yes, in the engine room gang.

Q. You have been going to sea?

A. Yes, two years and nine months.

[fol. 147] Q. Don't you know that a vegetable box is about 4 feet long—4 feet wide, and 8 feet long, and slats 2 inches apart?

A. Yes.

Q. Kept on the upper deck for the purpose of ventilating the vegetables. You didn't see any such box?

A. I saw a box there.

Q. What kind of a box?

A. Just a common, ordinary box.

Q. How big?

A. I don't know the exact dimensions of that box; I didn't measure it.

Q. Did you read over your testimony before the trial?

A. No, I read it yesterday.

Q. Did you make a statement before you made your statement down at Jacksonville?

A. I made a few statements.

Q. Did somebody else write it out for you?

A. Only like—just—somebody took shorthand notes.

Q. Did you ever sign a statement after it was written out?

A. No.

Q. When were you first apprised that you were a witness in this case?

A. I don't remember the exact time; about a year before they took depositions in Jacksonville.

Q. What are you doing now?
A. I am a fisherman.
Q. Fishing out of where?
A. Out on the beach, out of Mayport.
Q. Do you remember this case pretty well?
A. Yes, I remember this case pretty well.
Q. What made you think about it?
A. Well, a man wanted me to come up here to testify and they had taken depositions in Jacksonville.
Q. That all occurred four years after the accident?
A. I don't know; the first man that talked to me about it was a little while after the accident, probably a year or so, [fol. 148] and the next time was when we took the depositions in Jacksonville, and the next was here in New York.
Q. What year was this accident?
A. 1920, but I don't remember the date; that was the only year I was on the "Jacksonville."
Q. Who first talked to you about the case?
A. I don't know the gentleman's name; they were trying to locate me more than anything else.
Q. Did you know this action was not commenced until the 30th day of October, 1923?
A. I didn't know nothing about the action of the case.
Q. Did this man tell you that suit had been commenced?
A. He did not; he wanted to know what I knew about the accident.
Q. Where did he see you?
A. At Mayport, in my home.
Q. Did he have any notes with him?
A. He did, and a lot of questions.
Q. Did he have any papers with him?
A. Not that I remember.
Q. Was that in 1923?
A. I don't remember the year.
Q. Would you contend that it was sooner?
A. I don't know. I don't remember.
Q. What day of the week was the accident on?
A. I don't remember that.
Q. Did you ever go home while you were working on the "Jacksonville"?
A. No, sir, never, till I quit the "Jacksonville."
Q. Did you ever go ashore?
A. Yes, sir.

Q. Did you ever have any friends visit you on the ship?

A. No, sir, not that I remember; she was laying alongside of the "West Compo" in the river.

Q. Was there any current in that river?

A. Not very much.

[fol. 149] Q. Was there any tide in the river?

A. There was very little tide up in that part of the river.

Q. Was there ever any wind in that river?

A. At times there is.

Q. Did this pier extend out into the river?

A. No, sir, it was built parallel with the river.

Q. Still, there was some tide and some current?

A. Very little at that point up the river.

Q. How were these boats secured together?

A. With lines.

Q. Were they port to port or starboard to starboard?

A. I don't remember.

Q. Which way was the "Jacksonville"; up or down stream?

A. I don't remember that.

Q. Which way was the other vessel?

A. I don't remember.

Q. Which vessel was lower in the water?

A. The "Jacksonville."

Q. How much?

A. Approximately 8 or 10 feet or 9 feet; I don't know exactly.

Q. The deck of the "West Compo" to which the planks led was about 8 or 10 feet higher than the deck of the other ship?

A. The saloon deck of the "West Compo" was 8 or 10 feet higher than the boat deck of the "Jacksonville."

Q. That would give a total difference of about 20 feet in the difference between the height of the ship; that is, the height they were in the water?

Objected to.

Q. The saloon deck is below the boat deck of the "West Compo"?

A. Yes.

Q. If the planking ran from the boat deck of the "West Compo" down to the boat deck of the "Jacksonville" the

[fol. 150] distance would have been about 20 feet, would it not?

A. Yes, or close to it.

Q. Did you see any gangplank on either of these vessels?

A. Only the one I was using.

Q. That was not a gangplank, was it?

A. It was a regular gangway running between the two ships.

Q. Did you ever see a gangway on any other ship?

A. Yes, I have seen gangways on other ships.

Q. Describe them.

A. Well, some of them that I have seen were made out of small boards, 4-inch boards running up and down to cleats running across them and a handle on it; and some had lines; they were mostly lines run through holes in the stanchions.

Q. Have you seen a gangway in the regular plan of a ship?

A. Yes; the ones I have seen average about 25 or 22 feet. I have never measured them. They are heavy construction.

Q. Are they used to get on to the dock?

A. Most of them are. They have wheels on one end and if you are loading or unloading a ship, those wheels roll along as the ship goes up or down.

Q. Why are wheels necessary?

A. So that when the ship rises or falls this gangway will not be insecure.

Q. These two ships were together?

A. Yes.

Q. Were they always the same distance apart?

A. There may have been a little variation; not much.

Q. They would vary?

A. Mighty little.

Q. A foot or two?

A. I would not say that; I never noticed.

Q. What was there to keep them close together?

[fol. 151] A. Those lines that tied the two ships together.

Q. Where did those lines run from?

A. They had out spring lines and midship lines.

Q. What deck did they run to?

A. I didn't notice that close.

Q. You know the decks were 8 feet apart, don't you?

A. No.

Q. You know that the butts of the "Jacksonville" were on a deck 8 or 10 feet below the butts on the other boat, don't you?

A. I know what?

Q. Did they have lines from the butts of the "Jacksonville"?

A. They may have had them on the capstan or on butts or anything; I didn't notice that, but I know she was tied there.

Q. She was tied there with lines?

A. Yes.

Q. And the lines run from the deck where the butts were on the "Jacksonville" up through the chocks to the butts on the deck of the "West Compo"?

A. I don't know where they run.

Q. That would give a certain amount of slack line, would it not?

A. I don't know; I didn't notice.

Q. Do you still say that the two boats lay together?

A. I didn't say; I don't know how far they were apart.

Q. Have you talked this case over with your counsel or anybody since you witnessed the accident?

A. No.

Q. Did anybody tell you that you had made a mistake in testifying that those planks were resting on a box?

A. No, sir.

Q. Did it occur to you that if the planks were resting upon a box without any wheels, that the box would be crushed when the ships came together?

[fol. 152] A. It never appeared to me that way.

Q. You never thought about it?

A. Yes, I did.

Q. It is a fact that the end of that plank swung in a line between the end of the boat outside to the smokestack guy; isn't that right?

A. No, sir.

Q. Do you still contend that the end of those planks on the vegetable box of the "Jacksonville" were resting on that box and nothing else?

A. I don't say it was resting on a vegetable box; it was resting on a box.

Q. Didn't counsel ask you about a vegetable box?

A. No, he asked what the gangplank was resting on, and I said a box.

Q. Didn't he ask you if it was on a vegetable box?

A. Not that I remember.

Q. And didn't you say yes?

A. No, sir.

Q. Do you still say that you don't know what a vegetable box is?

A. I don't know.

Q. Describe the box that you saw.

A. It was just a common ordinary box; that is all the explanation that I can give.

Q. How big?

A. I didn't measure it; about 4 feet long; 2, and about 4 feet long.

Q. 2 feet wide and about how high?

A. About 3 feet.

Q. Well, is it 3 feet?

A. I said approximately 3 feet.

Q. Show 3 feet.

A. That is approximately 3 feet (illustrating); that is the height of the box.

Q. Didn't you say you got on to a box 4 feet high?

A. I said I got on to the box.

Q. Didn't you say it was 4 feet high?

A. No.

Q. And didn't you say you didn't remember how you got up on that 4-foot box?

A. I don't remember.

[fol. 153] Q. Do you still say that the ends of the planks were resting on that box?

A. They were, yes.

Q. And the vessels were secured by lines running from the deck on one to the deck of the other?

A. Yes.

Q. And there was a current in the stream?

A. Very little.

Q. And there was a tide in the stream?

A. Very little.

Q. If there was a tide it would go upstream that time?
A. Sometimes it would.
Q. And didn't one of those vessels swing out more than the other sometimes?
A. Not if it had a good tight spring line on.

WILLIAM H. ANDREU, being duly sworn and examined as a witness for the defendant, testifies:

By Mr. Cunningham:

Q. Are you from Jacksonville?
A. Yes.
Q. Did you come up here at my request?
A. Yes.
Q. To testify in this case?
A. Yes.
Q. Your testimony was also taken in August when Mr. Floyd's was taken on deposition?
A. Yes.
Q. Were you connected with the crew of the steamship "Jacksonville" on the 1st of August, 1920?
A. I was, as wiper.
Q. That is one of the jobs attached to the engine room?
A. Yes.
[fol. 154] Q. How long had you been a member of the crew?
A. About two weeks.
Q. Did you join the ship there?
A. Yes, at the Municipal office.
Q. Did you see the accident to John Johnson?
A. No, sir.
Q. Did you see him on board the "Jacksonville" that day?
A. Yes.
Q. When did you first see him?
A. I first saw him when he came aboard.
Q. Where did you see him first?
A. I saw him on the deck of the "West Compo."
Q. What did you see him do?

A. I saw him come down the gangway staggering.

Q. That is the gangway extending from the "West Compo" down to the "Jacksonville"?

A. Yes.

Q. About what angle was the gangplank which connected the two ships?

A. About a 15-degree angle.

Q. You saw him first on the "West Compo" and then you saw him on the gangplank itself?

A. Yes.

Q. Had you seen him before?

A. No, sir.

Q. What attracted your attention to him?

A. Well, he was a pretty large sized man.

Q. How did he come down the gangplank?

A. Staggering.

Q. Did he have to assist himself by the hand line which was along one side of the gangplank?

A. Yes.

Q. Where was the line which I have just spoken of?

A. Do you mean the hand line?

Q. Yes.

A. It was tied from the rail of the "West Compo" to the port davit on the "Jacksonville."

[fol. 155] Q. The davit on the "Jacksonville" was on the boat deck?

A. Yes.

Q. And the point where it was tied on the "West Compo" was on the rail?

A. Yes, on the rail on the saloon deck.

Q. How was the gangplank resting on the "West Compo"?

A. It was tied to the deck of the "West Compo."

Q. How?

A. With ropes.

Q. To what?

A. Well, I don't know exactly what it was tied to, but it was tied on each side.

Q. That is, on the "West Compo's" side; where did the "West Compo" end of the gangplank rest?

A. On the deck.

Q. Was there a rail or railing above the gangplank on the "West Compo"?

A. There was a movable rail, the same as if you could take the rail right out.

Q. Had that movable portion been removed?

Objected to.

Objection overruled.

A. Yes.

Q. You say there was a movable section of the rail where the gangplank rested, on the "West Compo"?

A. Yes.

Q. Was that movable section left there, or was it taken out?

A. It was taken out.

Objected to.

The Court: He said it was taken out.

Q. Did you use the gangplank yourself?

A. I did.

Q. How was it fixed, as far as steadiness or swinging [fol. 156] was concerned?

A. It was lashed to the deck of the "West Compo" and resting on a box on the "Jacksonville" end.

Q. And the box was on the boat deck of the "Jacksonville"?

A. Yes.

Q. What were the dimensions of the box on which the "Jacksonville" end rested?

A. Well, I should say approximately about 2½ or 3 feet high.

Q. About how long and how wide?

A. I don't remember that.

Q. Your recollection is that the box itself sat how far above the "Jacksonville" deck?

A. About 2½ or 3 feet.

Q. Have you a distinct recollection of where the "Jacksonville" end of the plank rested? Did it rest on the box or was it suspended in the air?

A. It rested on the box.

Q. What was the nature of the boat deck of the "Jacksonville"? What was the boat deck of the "Jacksonville" covered with?

A. Canvas.

Q. Canvas over what?

A. On the deck, on the top of the deck.

Q. Do you know what was under the canvas?

A. Wood, I imagine.

Q. You don't know whether it was wood, but that is your best answer?

A. Yes.

Q. But you are sure that the deck itself was covered with canvas?

A. Yes.

Q. When Johnson came on board this ship you saw him first on the "West Compo"?

A. Yes.

Q. And then you saw him come down the deck?

A. Yes.

Q. Was he alone or was he accompanied by somebody [fol. 157] when he came on board?

A. He was by himself.

Q. Did you see the boatswain Carlson there at that time?

A. No.

Q. Do you know who he was?

A. I just knew him by the name of Carlson; that was all.

Q. That is, you knew the boatswain of the "Jacksonville" and knew that his name was Carlson?

A. Yes.

Q. You say Carlson was not present when Johnson came on board?

A. I never saw him.

Q. Where did Johnson go after he arrived on the "Jacksonville"?

A. He came down to the saloon deck by a ladder from the other side, down to the saloon deck, and where he went after that, I don't know.

Q. When he landed on the boat deck he went down a ladder to the next deck below?

A. Yes, the saloon deck.

Q. Is that also called the well deck?

A. No, sir.

Q. You have to go down still another deck to get to the well deck?

A. Yes, sir.

Q. You don't know what became of him?

A. No, sir.

Q. Did you see Johnson again that day?
A. Not until after he was in the water.
Q. When did you see him again?
A. About dusk.
Q. About what time of day did Johnson come on board the steamship "Jacksonville"?
A. Around 5 o'clock.
Q. Were the men at work at that time?
A. I don't remember whether that was just knocking off time or just before knocking off time.
Q. Had you men had mess yet that day?
A. No, sir.
[fol. 158] Q. What time did you have mess aboard the "Jacksonville"?
A. At 5:30.
Q. What time did you next see Johnson?
A. About dusk.
Q. Can you tell us in terms of hours of the day about what time dusk was then?
A. I should say about 7 o'clock.
Q. What attracted your attention to Johnson?
A. Someone said a man overboard, and I went up to where it was.
Q. Tell the Court and jury what you saw.
A. A fellow by the name of Sonstehy went down the ladder, over the side, and went down to him.
Q. Did you look over the side of the vessel?
A. Yes.
Q. Where was Johnson then?
A. Down in the water.
Q. How far apart were the two ships at that time?
—. At the top or bottom?
Q. At the bottom.
A. Not more than 2 feet.
Q. How far apart were they at the top?
A. About 3 or 4 feet.
Q. When you looked down you saw Johnson in the water?
A. Yes.
Q. What did Sonstehy do?
A. He put a ladder over the side and went down to Mr. Johnson.
Q. Did he go down alone?

A. He went down alone, and just after he went down a fellow came from the "West Compo" down the gangway and went down with Mr. Sonstehy.

Q. Do you know who that was?

A. I do not.

Q. Would you recognize his name?

A. No, sir.

Q. What did you see?

A. They pulled him up on the deck.

Q. When they brought him up which ship did they bring him on to?

A. On the "Jacksonville."

[fol. 159] Q. How near to you did they put him on the deck?

A. About 2 or 3 feet from me.

Q. Was he conscious or unconscious?

A. He acted unconscious.

Q. Did you notice anything about him at the time?

A. He smelled of liquor, yes.

Q. You smelled that yourself?

A. Yes.

Q. You said he staggered down the gangplank when he came on board?

A. Yes.

Q. And the next time was when he was finally pulled on board?

A. Yes.

Q. Who was the carpenter of the ship at that time?

A. Mr. Stuart.

Q. Was he the carpenter when you joined the ship?

A. Yes.

Q. Did you make the voyage which the "Jacksonville" took two or three weeks after this accident?

A. Yes.

Q. Was Stuart the name of the carpenter then?

A. He wasn't the carpenter then; he was the boatswain.

Q. But he was carpenter when the accident took place?

A. Yes.

Q. Did he make the trip as boatswain subsequently?

A. Yes.

Q. Who was the boatswain at that time?

A. Carlson.

Q. Do you know what became of him?

A. No, sir.

Q. He didn't make the next trip with the ship?

A. No, sir.

Q. Was there repair work going on on the ship at that time?

A. Yes, on deck and in the engine room.

Q. Where was your work then?

A. In the engine room.

[fol. 160] Q. Were you there when the repair men were working on the engine room?

A. Yes; they were working on the steering engine.

Q. How many men were in that gang?

A. Say about 40.

Q. Do you know whether there were other men working up on the decks, repairing the winches?

A. Yes.

Q. Did you see them from time to time?

A. Yes.

Q. Did you see any of them use this gangway yourself?

A. Every day I did, yes.

Q. I think you said it was resting squarely upon this box?

A. Yes.

Q. These men all came from the bow right across the "West Compo" down the gangplank and on to the "Jacksonville"?

A. Yes.

Q. How many members of the crew were there?

A. Around 40.

Q. Do you know whether or not there were any members of the crew missing or lacking at that time?

A. Not as I know of.

Q. Was the carpenter on board the ship there?

A. Very near every day I saw him, yes.

Q. Did you mess in the mess room with him?

A. No, sir.

Q. Was there any time when the carpenter was absent from the ship for three days at a time?

A. Not to my knowledge.

Q. Will you look at this model which Mr. Johnson says represents the way this gangplank was rigged from the

"West Compo" to the "Jacksonville"? Do you notice that he has it hung up in the air with a guy or rope attached to another rope which comes from what is apparently a smokestack?

A. Yes.

[fol. 161] Q. It holds it in the air above a square which has been marked in pencil. Mr. Johnson states that that end of the gangplank was swinging free in the air in that way. Is that the way it was rigged on the "Jacksonville"?

A. No, sir.

Q. Did this lower or "Jacksonville" end of the gangplank swing free in the air or rest solidly on something?

A. It rested solidly on a box.

Q. Mr. Johnson states that when he fell in ascending the gangplank he caught his arm around a stanchion. Will you tell us whether or not that gangplank was rigged with any stanchion at all?

A. None, as I know of.

Q. Do you mean that you are in doubt whether there was a stanchion there?

A. No, sir, there was none that I saw.

Q. Well, was there any there?

A. No, sir.

Q. So that your testimony is, or is your testimony, that this heaving line extended from the rail on the "West Compo" straight down to a boat davit?

A. Yes.

Q. And that there was nothing by way of a stanchion in the entire length of that rail?

A. No, sir.

Q. When you went up the gangplank from the "Jacksonville"—in other words, when ascending the gangplank—which side of you was the hand line on?

A. I don't remember.

By the Court:

Q. Immediately after Mr. Johnson fell did you see the gangplank?

A. I did.

Q. Was its position changed or was it in the same position that it was in before?

A. It was in the same position.

[fol. 162] Q. Was the hand line there?
A. Yes.
Q. Had the hand line been broken?
A. No, sir.

Cross-examined by Mr. Axtell:

Q. You are the Mr. Andren that testified down at Jacksonville, aren't you?
A. Yes.
Q. Do you remember what you testified to there?
A. Yes.
Q. Were you under oath?
A. I was.
Q. Did you swear to tell the truth at that time?
A. I did.
Q. Did you tell the truth?
A. I did.
Q. Did you make this answer on page 59:

"Q. Do you know whether the end of the gangplank was lashed to any part of the ship on the 'Jacksonville,' or just resting on a box?"

Did you make this answer:

"A. I don't know; it was on a box, was all I know."

Q. Did you make that answer?
A. I don't remember.
Q. Do you deny that you made that answer?
A. Well, no.
Q. Did you answer this question:

"Q. Was there any stanchion or hand rail on this gangplank?"

Q. Do you remember such a question being asked you?
A. Yes.
Q. Did you make the answer "Yes"? I will let you look at this deposition and read it over before you answer the question.
A. Not to my knowledge.
Q. Will you turn back to the beginning and read over all your testimony and tell us if there are any errors?

[fol. 163] Objected to.
Objection sustained.

Q. Then there was a question repeated to you:

"Q. There was a stanchion on it?
"A. Yes."

A. That book has got it that way.
Q. Then was this question asked:

"Q. Do you know what the stanchion was made out of?
"A. Made of an iron pipe."

Q. Did you answer that so?
A. I don't remember.
Q. (Reading:)

"Q. Was that made fast to the gangway?
"A. Yes."

A. Was it made fast to the gangway?
Q. Was the stanchion made fast to the gangway?
A. I don't remember.
Q. (Reading:)

"Q. Do you know whether or not there was a line made fast to that stanchion?
"A. Yes."

Did you make that answer?
A. I don't remember.
Q. You don't deny it, do you?
A. I said I don't remember.
Q. Which is correct? The testimony there or the testimony you have sworn to here?
A. The only thing I am going by is my basis of knowledge.
Q. On what is your basis of knowledge based? What is your knowledge?
A. My knowledge is of the gangplank.
Q. From what basis?
A. The basis of my best remembrance.
Q. What is your remembrance based upon?
A. I don't remember any stanchion being on the gangway at all.

Q. But you did so swear under oath in your deposition [fol. 164] in 1926, didn't you?

A. I don't remember.

Q. When did you read this deposition over?

A. I don't know.

Mr. Axtell: I offer in evidence page 59 of the deposition.

Mr. Cunningham: Tear it out if you want to.

(The page is marked Plaintiff's Exhibit 12.)

Q. Did you testify down there at that time that it was dark at the time Johnson was found in the water between the two boats?

A. I don't remember whether it was dark or dusk.

Q. I am asking you what you swore to last year. I don't ask you to remember. You don't remember what you swore to last year; is that it?

The Court: Ask him the question, Mr. Axtell.

Q. Did you see the ambulance doctor come there?

A. I did not.

Q. Did you know that an ambulance did come?

A. Only by hearsay.

Q. It came right away, just as soon as possible?

A. I expect so; I don't know.

Q. Did you see the doctor in his white suit?

A. No.

Q. Did you see him come down and help get this man into the ambulance?

A. I did not.

Q. Did you testify to this on cross examination (page 56):

[fol. 165] "Q. Were you on watch?

"A. No. sir.

"Q. You were one of the day gang?

"A. Yes.

"Q. Do you remember whether or not you were working that day?

"A. I was working that day."

Did you so testify?

A. Yes.

Q. Did you say this:

"Q. What time of day was it you saw Mr. Johnson in the water between these two ships?"

Were you asked that question?

A. Yes.

Q. (Reading:)

"A. It was night."

Did you make that answer?

A. I don't remember whether I made that answer or not.

Q. (Reading:)

"Was it light or dark?

"A. Dark."

Is that correct? Did you so testify?

A. I don't remember whether I said it was dark or dusk.

Q. Well, which was it?

A. It was between dark and dusk, just making good dark.

Q. Do you live in Jacksonville?

A. No, in Mayport.

Q. Did you ever go off the ship?

A. I did.

Q. Were you on watch as a wiper while the vessel was in port?

A. On watch working, to work in the engine room, yes.

Q. On Sundays?

A. On Sundays.

Q. Do you mean to say that in your home port and your home town you were working on Sundays on watch as a wiper?

A. I was.

Q. What were you doing?

A. I was doing as the first assistant told me to do.

Q. What did you do the first of August?

A. Repair work.

Q. You know that was Sunday, don't you?

A. Yes.

Q. You swear you were working on Sunday?

A. I do.

[fol. 166] Q. Were the rest of the crew working?

A. Yes.

Q. Did you go to sea on the ship?

A. I did.

Q. When you went to sea on the ship did you have regular watches?

A. Only the day watch; working day times.

Q. Aren't your watches different in port than at sea?

A. A wiper is not; they work all the time.

Q. And in that time they work on Sunday in Jacksonville?

A. Yes.

Q. What did you receive?

A. I don't remember.

Mr. Axtell: I offer in evidence page 56 of the deposition.

(It is marked Plaintiff's Exhibit 13.)

Redirect examination.

By Mr. Cunningham:

Q. Do you remember whether there were some lights rigged on the "Jacksonville" end of the gangplank?

Objected to as leading.

A. Yes.

Q. Do you remember whether there were any means provided on the "West Compo" at that end of the plank for illumination?

A. Yes, there was a big cluster light over the top of the gangway that shone down on the gangway.

Q. Do you remember whether or not, at the time Johnson fell into the water, those lights were burning?

A. Yes, sir, they were burning.

Q. Do you remember whether or not there was anything unusual going on on board the "West Compo" that night?

[fol. 167] A. There was a party of some kind.

Q. Do you remember what the condition of the decks of the "West Compo" was in the matter of illumination?

A. They were all lit up.

Q. Did you ever hear what the party was that was going on on board the "West Compo"?

A. There was a kind of a marriage supper, I think, a wedding.

Recross-examination.

By Mr. Axtell:

Q. You haid there was a box under the end of the planks?
A. On the "Jacksonville."
Q. Which way was the long way of the box running?
A. I don't remember.
Q. Was it a box with slats in it?
A. I don't remember whether it had slats in it or not.
Q. Was it a vegetable box?
A. I don't know.
Q. Have you read the testimony of the carpenter that it was a vegetable box 4 feet high and 4 feet wide and 8 feet long?
A. I don't remember what he testified.
Q. Did you hear him testify in Jacksonville?
A. No.
Q. You testified and the man was sitting right in the room?
A. Yes.
Q. And he went down there to hear you?
A. He did.

Archie Stuart, being duly sworn and examined as a witness for the defendant, testifies:

By Mr. Cunningham:

Q. Were you a member of the crew of the steamship "Jacksonville" on August 1, 1920?
A. Yes.
Q. What was your job?
A. Carpenter.
[fol. 168] Q. When did you join the steamship "Jacksonville"?
A. Six months previous to that.
Q. Had you made a voyage or more in her?
A. Yes, one voyage.
Q. Did you make the voyage succeeding the period August 1, 1920?
A. Yes.

Q. Did you sail as carpenter or something else on that voyage?

A. I sailed as boatswain.

Q. Whose place did you take as boatswain on the voyage which followed August 1, 1920?

A. A. Carlson's place.

Q. Had he been boatswain on the previous voyage?

A. Yes.

Q. Your home is where?

A. In Jacksonville, Florida.

Q. Have you come up here at my request on telegraphic summons to testify in this case?

A. Yes.

Q. Did you testify in this case on the 4th of August, 1926, at Jacksonville, at the office of the United States Attorney?

A. Yes.

Q. Was Mr. Johnson present when you were testifying at that time?

A. Yes.

Q. Do you remember an accident happening on the "Jacksonville" on August 1, 1920?

A. Yes.

Q. Did you see the accident, personally?

A. No, sir.

Q. So that all you know about how it happened is what somebody else told you?

A. From hearsay.

Q. Did you see Mr. Johnson on August 1, 1920?

A. That was that day.

Q. Yes.

A. Yes.

Q. Where did you see Mr. Johnson the first time that day?

A. On the forward well deck.

[fol. 169] Q. Did you see Mr. Carlson on the ship that afternoon just before you saw Mr. Johnson?

A. Yes.

Q. Where did you see Mr. Carlson on that afternoon just before you saw Mr. Johnson?

A. I saw him up in the forecastle.

Q. Did you hear anything said about Mr. Johnson by him at the time, or didn't you?

A. We were all there in the forecastle and somebody came and said Mr. Johnson wanted to see Mr. Carlson and he said, "Tell him to come on board."

Q. That was in the forecastle?

A. Yes.

Q. And Carlson was in the forecastle when that was said?

A. Well, he was in the forecastle or around the forecastle. It is 7 years ago, you know.

Q. Did you see Mr. Johnson on board the ship shortly after that?

A. I did.

Q. When you heard that was Mr. Johnson on the ship at the time, so far as you know?

A. When I heard what?

Q. When you heard that Johnson wanted to come on board?

A. I don't know if he was ashore or on board, but I just overheard the conversation.

Q. Did you know Johnson at that time, personally?

A. No, sir.

Q. Had you ever met him either then or any time prior?

A. Not to my knowledge.

Q. When did you first see Johnson on board the ship?

A. I first saw Johnson on board the ship that day of the accident on the forward well deck. I was coming from aft when the boatswain called to me and said, "Come and meet Johnson," and I went over and shook hands with him and kept on going. I was busy at that time.

[fol. 170] Q. When Carlson called you to come over and meet Johnson, was that before or after what you have told us you heard in the forecastle?

A. That was after.

Q. After you heard that you had gone where?

A. I went aft.

Q. When you came back from what you were doing, then Johnson was on board the ship?

A. Yes, sir.

Q. At that time the boatswain, Carlson, called you over to meet him?

A. Yes.

Q. Did you notice anything about Mr. Johnson's condition at that time?

A. He was feeling pretty good.

Q. Did you notice anything? Could you detect whether or not he had been drinking?

A. Yes, I noticed in his actions that he was not acting like a sober man would; you could smell liquor too.

Q. After you shook hands with him, where did you say you went?

A. I went around forward.

Q. Do you know where Johnson then went?

A. I am not positive, but I think he went to the boatswain's room.

Q. Did you and the boatswain share the same room on board the ship?

A. Yes.

Q. That is the custom, is it not?

A. That is the custom.

Q. The boatswain and the carpenter share the same room?

A. Yes.

Q. What time of day was it that you shook hands with Johnson, as described?

A. I think around about 5 o'clock.

Q. Had you knocked off work for the day?

A. We were just finishing up for the day.

Q. That was Sunday?

A. Yes.

[fol. 171] Q. Had the crew been at work that day?

A. I can't recollect about the crew, but I know I was working all day.

Q. Was the repair work going on, was the repair gang on the work on the winches and the engine room?

A. Yes.

Q. Was that a rush job?

A. That was a rush job.

Q. And that was why they were working on it, putting in day work that Sunday?

A. Yes.

Q. What time of day did you see Johnson on board the ship first?

A. Well, around about 5 o'clock it was when I first saw Johnson.

Q. What time did you other men have your mess on the "Jacksonville"?

A. Around 5:30.

Q. Did you have your supper on board the ship that night?

A. Yes.

Q. Was it before or after you first saw Johnson on the ship?

A. After.

Q. Before you had your supper you knocked off work?

A. Yes.

Q. After you knocked off work where did you go then?

A. I went to my room.

Q. What for?

A. I think it was for a towel to clean up, and when I went in the room the boatswain and Johnson were sitting in the room with the door closed.

Q. When you opened the door they were inside?

A. Yes.

Q. Did you notice anything in there at that time?

A. No, sir.

Q. Did you get your towel?

A. Yes.

Q. What did you do then?

A. I went to the bath room and washed up and went back to the mess.

[fol. 172] Q. After you were washed up did you return your towel to your room?

A. No, I left it there and then I went to the mess room.

Q. After you finished your supper, where did you go then?

A. I went back up forward.

Q. Did you go to your room?

A. Not straight; I went up there and was standing speaking to someone when the boatswain and Mr. Johnson came out of the room hand in hand, and they wandered down the deck and I went into the room and changed my clothes to get ready to go ashore.

Q. When you stood there Johnson and Carlson came out of the room together?

A. Yes.

Q. Was the door open or closed at that time?

A. The door was closed till they opened it.

Q. They walked down hand in hand or arm in arm?

A. Arm in arm; they were leaning on each other. I went in the room and there was an odor of liquor. Then I changed my clothes and got ashore.

Q. Did you see Johnson again then?

A. No, sir.

Q. Did you ever see him again?

A. Yes, I met him again at Jacksonville.

Q. When was that?

A. At the time we gave our testimony.

Q. August 4, 1926?

A. Yes, August 4, 1926.

Q. About 6 years later?

A. Yes.

Q. He has testified that he met you in Jacksonville some three weeks or so before the accident. Did you hear him so testify?

A. Yes.

Q. Did you ever meet him in Jacksonville or see him before you saw him on the deck of that ship?

A. No, sir, not to my knowledge.

Q. You testified that you were the ship's carpenter?

A. Yes.

[fol. 173] Q. Did you absent yourself from your ship for three days prior to the accident which happened to Johnson?

A. No, sir.

Q. Were you off the ship at any time when it was lying outside of the "West Compo" during the day time?

A. Only on shore doing business.

Q. Were you off duty at any time?

A. No, I was on duty.

Q. Did you do your regular shift of duties each day during the time she lay outside of the "West Compo"?

A. Yes.

Q. Did you ever hear it said on board the ship that they needed another carpenter in your place?

A. No, sir.

Q. You were the ship's carpenter?

A. Yes.

Q. Did you hear Mr. Johnson testify that Carlson went up into Jacksonville to look for a man to take the place of the carpenter who had been absent three days?

A. I did.

Q. You were the only ship's carpenter on the "Jacksonville?

A. Yes, sir.

Q. Had you been absent three days?

A. No, sir.

Q. Did you know that Carlson was looking for somebody to take your place?

A. No, sir.

Q. Do you recollect the gangplank which connected the "Jacksonville" with the "West Compo"?

A. I do.

Q. Do you recollect it particularly?

A. Yes, sir, because I made it.

Q. Will you tell the Court and jury just what you did in making this gangplank?

A. I got three 10 x 2½ rough planks 12 feet long, and I nailed cleats across them, 2 inches broad, and about an inch thick.

[fol. 174] Q. How far apart were the cleats nailed on to the planks?

A. About 15 to 18 inches.

Q. What did those cleats serve for?

A. A foothold.

Q. Did they also serve to hold the planks together?

A. Yes, sir.

Q. You did that work yourself?

A. Yes.

Q. Who ordered you to do it?

A. The chief officer.

Q. Did you take your orders directly from him or from the boatswain?

A. The boatswain had nothing to do with me. I got my orders from the chief officer.

Q. Who was the chief officer at that time?

A. Mr. Irwin.

Q. Was he the chief officer on the night that Johnson met with his accident?

A. No, sir.

Q. Had he been succeeded by somebody else?

A. John K. Littlefield.

Q. How long before the accident was he succeeded by Littlefield?

A. I don't recollect.

Q. You are sure that the change had taken place?

A. Yes, sir.

Q. And the previous chief officer had directed you to erect this gangplank?

A. Yes.

Q. After you had constructed the gangplank did you put it up between the two ships?

A. Yes, sir, along with several sailors.

Q. How did you attach it to the "West Compo"?

A. We had two lines on the end of the gangway and on the "West Compo" end, one at each end, and it was lashed to a cleat on the deck of the "West Compo" and on the stanchion on the other side, down on the "West Compo."

Q. At the top of the gangplank on the "West Compo" side it was lashed on both sides to a stanchion or to a [fol. 175] cleat?

A. One to a cleat and the other to a stanchion.

Q. Where did the "Jacksonville" end of the gangplank rest?

A. On the boat deck.

Q. Did it rest right on the boat deck?

A. I can't very well remember what it rested on, but it didn't rest on the deck as it was a canvas deck and it would have torn the deck up, so it was lying on something, but I can't recollect what it was.

Q. Do you recollect whether it rested on something securely or whether it was suspended in the air?

A. It rested on something securely, because that end on the "Jacksonville" was not made fast at all.

Q. Was the "Jacksonville" end of the gangplank suspended in the air?

A. I can't recollect what it was suspended on.

Q. You have heard the testimony that it rested on a box?

A. Yes.

Q. Have you any recollection about it?

A. Well, I think it did rest on a box, but what kind of box, I can't figure out.

Q. I show you a diagram which has been used by Mr. Johnson to show the Court and jury how the gangplank rested on the "Jacksonville" or was secured there, and I will ask you whether that is the way in which the gangplank was secured on the "Jacksonville" end of the gangplank?

A. No, sir.

Q. You observe from this model that what would be the "Jacksonville" end of the gangplank is hung by a sort of loop around the lower end of it with a rope running up to a guy running from the smokestack, so that it hung freely some inches above the deck of the ship?

A. Yes.

[fol. 176] Q. Is that the way the gangplank was erceted?

A. No, no sane seaman would rig a gangway like that.

Q. Did you use it yourself?

A. Yes.

Q. Frequently?

A. Yes, sir.

Q. When you went up it was a firm gangplank with firm footing, or did it swing in the air?

A. It had a firm footing.

Q. Did you see other men using it?

A. Yes.

Q. How many men were working on the engines of the vessel?

A. I would figure around 40 or 50 men.

Q. How many members of the crew were there?

A. Around 40.

Q. So that you all used it frequently?

A. Yes.

Q. Did you ever hear of any accident happening to anybody but Mr. Johnson on this gangplank?

Objected to as hearsay.

A. No, sir, I never heard of anyone going up or down that gangplank and meeting with an accident; I never heard any complaint about the gangplank.

Q. Where was the heaving line that was used as a hand rail erected on the gangplank?

A. It was erected on the rail, the top guard rail on the "West Compo."

Q. On the "West Compo" end there was what?

A. There was a guard rail there.

Q. One end was tied to the guard rail there?

A. Yes.

Q. Where was the end on the "Jacksonville" erected?

A. It was made fast to the boat davit.

Q. Was there any stanchion on that gangplank through which this hand or heaving line ran?

A. No, sir.

[fol. 177] Q. In order to put a stanchion there what would you have to do?

A. I would have to get a stanchion made with two holes and pull it through the plank.

Q. Will you show what you mean by that? Will you show it to the jury?

A. I would have to have a stanchion made with a socket and hole on each side of it to put the two bolts through to a fish plate at the bottom.

Q. When you had arranged that in the gangplank the stanchion would sit down in the socket?

A. Yes.

Q. How would it then be held upright?

A. The two bolts would hold it upright.

Q. Would such stanchion have eyes at the top through which you could reeve a line?

A. Yes.

Q. You made that gangplank yourself?

A. Yes.

Q. Was there any such stanchion there?

A. No, sir.

Q. On which side of the gangplank was the heaving line that was used for a hand rail, having in mind that you are coming down the gangplank from the "West Compo" to the "Jacksonville"?

A. I made a wrong statement in my statement in Jacksonville. After I saw the plans of the ship I realized my mistake. I said it was the opposite way from which it is; it was the right-hand side going up, and the left-hand side coming down.

Q. The right-hand side going up and the left-hand side coming down?

A. Yes, the left-hand side coming down.

Q. So that if Mr. Johnson went up that gangplank the hand line was on his right?

A. On his right-hand side.

[fol. 178] Q. Do you remember what arrangements were made on the "West Compo" in the matter of lighting the gangplank?

A. No, I don't know.

Q. Were there any arrangements made?

A. Not to my knowledge.

Q. Were there any lights on the "Jacksonville" end of the gangplank?

A. Yes, there was a cluster light.

Q. How many lights to a cluster were there?

A. From 5 to 7.

Q. About what candlepower?

A. Just the ordinary ship's candlepower; I don't know what it was.

Q. They wer electric lights?

A. Yes.

Q. And their power came from the ship's dynamo?

A. Yes.

Q. Between the 1st of August, 1920, and the 4th of August, 1926, a period of six years, you never saw Johnson at all?

A. No, sir.

Q. And the second time that you ever saw him was in the office of the United States Attorney in Jacksonville, when your deposition was taken in this case?

A. Yes.

Q. Johnson was present, wasn't he?

A. Yes.

Q. After your deposition had been taken did you have a conversation with Mr. Johnson out in the corridor of the Government Building there where the testimony was taken?

A. I did, sir.

Q. Will you tell the Court and the jury what conversation you had with Mr. Johnson after you had finished giving your testimony before the Commissioner down there?

A. We were walking out of the court room door and Mr. Johnson was walking alongside of me and I said, "I am sorry for you, but I have told nothing but the truth." And he said, "I know, but I was sober when I came on board, and got it all on board."

[fol. 179] Cross-examined by Mr. Axtell:

Q. Isn't it true that Mr. Johnson remonstrated with you for telling what he called a lot of lies and you said, "I told nothing but the truth, Mr. Johnson"?

A. That was what I said.

Q. And then didn't you say, "It is too bad you didn't see me before"?

A. No, sir.

Q. Didn't you say that?

A. No, sir.

Q. Did the ship have a regular gangway?

A. An accommodation ladder.

Q. Did she have a gangway with wheels on it?

A. No, sir.

Q. If you had had such a gangway would you have used it in this place?

Objected to as calling for a conclusion.

The Court: He may answer.

A. It all depends on the length of the gangway we would have had.

Q. A ship of that size would carry a gangway 20 feet long.

A. Ships of that size don't usually carry an ordinary gangway.

Q. You have seen them?

A. I have seen them and made them.

Q. You have seen them with wheels on them provided in a regular equipment on such ships?

A. Yes.

Q. If you had had such a gangway on that ship would you have used it?

A. No, sir.

Q. Why would you not ever put the top up and tie it to the stanchion in the cleat and let the wheels rest on the canvas deck below, so that these ropes would swing in and out and there would be no tearing of the canvas?

A. You couldn't, because there would be too much of a [fol. 180] slope. The boat had not so much room there in front, there was the accommodation or wireless, and some other party, I think the deck engineer, lived up there in the wireless room, and there would be no room.

Q. There is another thing: Did this thing have an opening in the deck for the rail of the "West Compo" at this point?

A. Yes.

Q. There was a stanchion on either side, then?

A. There was a stanchion on either side.

Q. How far apart were those stanchions?

A. I think around 3 feet.

Q. That was a removable rail that went in there?

A. Yes.

Q. Was it one piece of rail that dropped in or was it pieces of pipe that slid into each other?

A. Well, they are all made in one way, with three pieces of iron; not solid iron, and the ends are turned down, that it drops into. There were four drops(?), two in the top and one in the bottom.

Q. Were they separated or all one piece?

A. They were all one piece, of course.

Q. Were there two of those pieces of pipe?

A. There were three pieces, I think, in height.

Q. It had three pipes in it?

A. Three pipes in it.

Q. A three-pipe rail?

A. Yes.

Q. You think so?

A. I am mostly positive; it was either 3 or 4.

Q. Were they all the same size?

A. No, the top was a 2-inch pipe and the other was an inch.

Q. Did you put them all in at once?

A. Yes.

Q. You said she had 3 or 4 rails?

A. Yes, but she had only four ends, the top and the bottom.

[fol. 181] Q. If you had two stanchions there 3 feet apart and you had three planks of your gangplank 12 inches wide, which fitted in between them, why didn't you tie your lashing to your two stanchions evenly on each side instead of laying one over on a cleat?

A. I said the planks were 10 inches wide. We didn't do that because it is a better hold on the cleat than it is around a stanchion.

Q. At the end of the rail of the ship where you go down the gangway, was there a little steel gunwale at the side of the ship?

A. It came up above the deck level; they have got a gunwale about 2½ inches.

Q. It is a little higher than that?

A. Sometimes.

Q. Sometimes they are 4 or 5 or 6 inches high?

A. No, sir; some are 4 inches, but I never saw one 6 inches.

Q. You never saw one 2 inches, did you?

A. Yes, a 2½ angle iron I have seen.

Q. And you have got the steel plating of your ship——

A. Yes.

Q. Inside of that you have got another plate equally thick?

A. You have got an angle iron inside, and they are riveted together; they might be ⅞ or ¾ thick.

Q. Not less than ⅝?

A. No.

Q. Do you say you had an angle iron inside of that as thick as that and only 2 inches high?

A. I say 2½.

Q. The average is about 4½ to 5 inches?

A. Not in all gunwales.

Q. Do you remember this gunwale particularly?

A. No, not particularly.

Q. You have heard a lawyer here say that that thing was not so high as 6 inches, haven't you?

A. I never paid no attention; I didn't care.

[fol. 182] Q. You heard Mr. Johnson testify that the plank was resting on top of the rail, really the gunwale?

A. The gunwale, yes; it is not a rail. The side of the ship is never called a rail.

Q. You knew what they were talking about?

A. How did I know?

Q. Didn't you?

A. I am a shipbuilder by trade, and I think I know a little about ships.

Q. You knew what was meant, didn't you?

A. No, sir.

Q. What day of the week was it?

A. Sunday.

Q. How do you know it was Sunday?

A. Well, only hearsay; for I forgot distinctly what day it was.

Q. When did you first know it was Sunday?

A. The last testimony in Jacksonville.

Q. I read you a question from page 24——

A. That was after I gave the testimony; then I knew it was Sunday.

Q. (Reading:) "Q. You don't remember whether it was Sunday, Monday or Tuesday?

A. I don't remember what day it was." A. That is correct, sir.

Q. Who told you afterwards?

A. I think Mr. Dreyer.

Q. Who was he?

A. That was a lawyer for the Shipping Board.

Q. What else did he tell you?

A. I can't recollect.

Q. Did you talk to him before you testified down there?

A. Yes, sir.

Q. Did you tell him down there that there was no stanchion on the side of this plank?

A. I don't think they asked me; I am not sure.

Q. You know there was, don't you?

A. There was no stanchion there.

[fol. 183] Q. Didn't you so testify down there?

A. No, sir.

Q. Did you see Mr. Johnson take any liquor?

A. No, sir.

Q. Did you see Mr. Carlson take any liquor?

A. Many a time, sir.

Q. Did you take any?

A. No, sir.

Q. You roomed with him, did you?

A. Yes, I roomed with him.

Q. Where did you see him take the liquor?

A. In the room.

Q. You never had a drink with him?

A. No; he was drinking 190 per cent whiskey, and I am not crazy enough to do that.

Q. What is 190?

A. That is whiskey just come out of the still and it was getting imported to Belgium, and several of the crew had

gotten down into the hold and had filled cans with it and got water and weakened it down.

Q. They were importing whiskey?

A. They were importing whiskey from America to Belgium.

Q. On this ship?

A. On this ship.

Q. Where were you born?

A. In Belfast, Ireland.

Q. Did you ever work in a distillery?

A. No, sir.

Q. Where did you get your information about whiskey 190 per cent?

A. That was the information that was going around the ship. I know it was hard enough. I have seen them throw a match at it and it would go up.

Q. You never had drunk it?

A. No, I have had none of that.

Q. You didn't even taste it?

A. No, sir, I was scared of it.

[fol. 184] Q. Did you ever see any other whiskey that was worse?

A. Yes, sir.

Q. Did you ever see any whiskey that was not worse?

A. Yes.

Q. Did you ever see any good liquor that was not worse?

A. No, sir.

Q. Then this was good liquor?

A. It was too strong; you take any ordinary liquor and a match would make it go like that (snapping his fingers); that went off like gunpowder.

Q. Have you had a drink since then?

A. I have had many a drink.

The Court: You are not bound to answer in a way that will incriminate or degrade yourself.

Q. Were you asked this question on page 17:

"Q. And then used the stanchion and the hand line and rigged up this accommodation ladder in that manner?

"A. Yes, sir, that was the way we did it."

A. That was referring to making a gangway.

Q. This was a substitute for the ——

A. Yes, a fool-rigged gangway.
Q. What do you mean by "fool-rigged"?
A. It was a makeshift.
Q. When you refer to a jury rigged anchor, what do you mean by that?
A. It is an anchor that is made jury rigged when it is over the stern end of the ship.
Q. How is it fastened to the ship?
A. By bitts by a line, wire.
Q. Lines running where?

The Court: What are you doing with anchors?
Mr. Axtell: You will see in just a moment.

[fol. 185] Q. You had lines running to something that is drifting aft, a kind of a big thing?
A. Yes; that is when a rudder breaks down.
Q. What you mean by jury rigged here is that you had rigged up two planks with two lines in jury rig hanging over?
A. No, I meant that it was a makeshift; it was not a permanent part of the ship. That is why I called it a jury rig.
Q. You called it a jury rig because it resembled the only jury rig you ever heard of?
A. No; that is not so.
Q. What was it?
A. A swinging rig is a jury rig.
Q. How are they made?

Mr. Cunningham: Objected to.
The Court: This is not a class in seamanship. It is not part of the issue. We are dealing with this gangway.

Q. Well, taking this gangway with the planks on it, you had a line rigged either side of it and it was hanging in the middle so as not to scrape the canvas deck, with a box to step up on it?
A. I would not call it any rig at all. That would be a fool's rig.

Mr. Cunningham: I offer in evidence the certificate of registry of the steamship "Jacksonville."
(It is marked Defendant's Exhibit A.)

Defendant rests.

[fol. 186] TESTIMONY IN REBUTTAL

JOHN JOHNSON, recalled, testifies in rebuttal:

By Mr. Axtell:

Q. You heard the testimony of Mr. Stuart and some of these other men; they said you appeared to have been drinking on the day of the accident?

A. Yes, I heard them say that.

Q. Had you had anything of an intoxicating nature to drink that day?

A. No, sir.

Q. Did the boatswain take any liquor, that you know of, that day?

A. I seen none. We had nothing when we went on board.

Q. Do you know what the regulations of the Shipping Board boats were at that time with regard to having liquor on board?

A. No, I do not.

Q. Did you hear the testimony of Mr. Stuart as to the conversation you had with him after the accident; the carpenter?

A. Yes, I heard him.

Q. I mean after this testimony down in Jacksonville last summer?

A. Yes, I heard it.

Q. Will you tell the jury what conversation you had with Stuart at Jacksonville last August?

Mr. Cunningham: Objected to. He has already testified once.

The Court: Yes; direct his attention to any specific thing, in rebuttal.

Q. Did you talk to him out in the hall after the testimony was given?

A. Yes; we both walked out together, and all I heard him say was, he said, "I am sorry to see you; I wish I had seen you before."

[fol. 187] By the Court:

Q. That was the whole conversation?

A. That was the whole conversation.

Q. You said nothing to him?
A. I answered nothing.
Q. But you said nothing to him before that?
A. No, sir.
Q. And that was all he said to you?
A. Yes.
Q. And you answered him nothing?
A. No, sir.

By Mr. Axtell:

Q. Did you ever see him before?
A. Yes; three weeks before I went on board the "Jacksonville" and I was talking to him before the accident; when the ship came in the first time, I saw him.

(No cross-examination.)

Mr. Axtell: I want to read part of the testimony of one of the defendant's witnesses, whose name was Joseph N. Sautier, who was supposed to have picked him out of the water, taken March 3, 1925, at Kansas City, Missouri. This testimony is at page 6, and begins:

"Q. Now, was there a ladder or gangplank of some size between the decks of the two ships?" (Take in down to and including:) "Q. Was there anything about that ladder or gangplank that was in bad repair or that was dangerous at all?

"A. Nothing whatsoever."

[fol. 188] Now page 9:

"Q. Now, what lines were there, if any, around this ladder?" (Take in down to and including:) "lit up properly."

On page 12:

"Q. Did you notice whether he had been drinking or not?

"A. No, I did not." (Take in:) "And it did not give the accident any more consideration."

"Q. You say you were under the impression that he had come from the 'West Compo' to the 'Jacksonville.' As a

matter of fact, do you know whether he was actually going from the 'West Compo' to the 'Jacksonville' or from the 'Jacksonville' to the 'West Compo'?

"A. I do not."

Mr. Cunningham: I will read some of the deposition which Mr. Axtell did not read, on page 10:

"Q. State whether or not there was a party being given on the 'West Compo' that night.

"A. There was a wedding dinner."

(Take in:)

"Q. Was that ship particularly well lighted on that occasion or not?

"A. Owing to this party, it was."

Mr. Axtell: I will read the depositions of Dr. Baker, Fred Angerholzer, taken the 19th of April, 1926.

(Reads depositions.)

"Deposition of witnesses produced, sworn, and examined on the 19th day of April, 1926, between the hours of 3:30 [fol. 189] and 4 o'clock in the afternoon of that day, at the office of Dowling & Pattison, Bisbee Building, wherein John Johnson is plaintiff and the United States Shipping Board Emergency Fleet Corporation is defendant, on behalf of plaintiff

"APPEARANCES

"The defendant appeared not, either in person or by counsel.

"The plaintiff appeared by Silas B. Axtell; Frank F. L'Engle, of counsel.

"ROBERT N. BAKER, a witness of lawful age, produced, sworn and examined upon his oath, states as follows:

"Direct examination.

By Mr. L'Engle:

"Q. What is your name?

"A. Robert M. Baker, M. D.

"Q. Where do you live now?

"A. Jacksonville.

"Q. How long have you resided in Jacksonville?

"A. Since October 15, 1919.

"Q. Were you in the City of Jacksonville during the months of July and August, 1920?

"A. I was.

"Q. Were you professionally engaged during that time?

"A. I was interne at St. Luke's Hospital, of this city.

"Q. As interne in that hospital, what was the general nature of your duties in regard to patients brought to the hospital?

"A. To attend to emergency cases, give such orders as [fol. 190] were necessary at the time, inform the doctor in charge of the case that had been brought to the hospital, receive his orders and see to it that they were carried out.

"Q. You had some large amount of discretion in emergency cases, did you not?

"A. I had as much as any other interne would have.

"Q. Do you know the plaintiff in this case, John Johnson?

"A. I recall Mr. Johnson indistinctly only.

"Q. Do you know whether or not John Johnson was ever a patient at the St. Luke's Hospital, where you were in 1920?

"A. Yes, sir, he was. He was brought there August 1, 1920.

"Q. Who was supposed to be his physician?

"A. Dr. James B. Parramore, who was at that time a marine surgeon for the Post of Jacksonville.

"Q. Do you remember receiving this John Johnson in that hospital as an injured patient?

"A. I do.

"Q. Can you remember the extent of his physical injury?

"A. As well as I can recall, he was suffering from an injured leg and injury to the skull.

"Q. You do not know of your own knowledge how he obtained this injury, do you?

"A. I do not know.

"Q. Do you know whether or not this John Johnson, at the time he was brought to your hospital, was in an intoxicated condition or under the influence of liquor?

"A. As I have said previously, I remember him indistinctly, but I am quite sure he was not under the influence of alcohol. Had he been markedly so, I am sure it would have made an indelible impression.

"Q. Doctor, upon what foundation do you make this sup- [fol. 191] position as to his being in an intoxicated condition making an impression upon your memory?

"A. Because first, so few drunken patients were brought to the hospital, and I can recall most every case while I was an interne there. Second, had he been drunk it would have excited broad comment. I don't remember anything unusual about the case more than any other accident case.

"Q. If this man had been under the influence of intoxicating liquors, would it have made any change, or any different treatment from any ordinary accident of a similar nature in reference to a stimulant that you might have to give him?

"A. It probably would, because in any treatment to relieve suffering and alleviate pain, special orders would have had to have been written to care for a man in an intoxicated condition.

"Q. You have no independent recollection of anything out of the ordinary other than an ordinary accident case?

"A. No, I only recall it as an ordinary accident case.

"Q. And you think, then, that the question of whether or not this man was under the influence of alcohol or intoxicating liquors would have been sufficiently out of the ordinary to have made you remember the thing very forcibly?

"A. I do.

"Q. But you cannot directly swear that the man was not under the influence of liquor?

"A. I would sooner swear that he was not than swear that he was.

("Hearing continued to Wednesday, 4 p. m.)

[fol. 192] "Thereupon one FRED ANGERHOLZER, having been first duly sworn as a witness upon behalf of the plaintiff, testified as follows:

"Direct examination.

By Mr. L'Engler:

"Q. State your name.
"A. Fred Angerholzer.
"Q. Mr. Angerholzer, where do you live, please, sir?
"A. 128 East Bay Street, Jacksonville, Florida.
"Q. How long have you resided in Jacksonville, Florida?
"A. Twenty-five years.
"Q. All the time at your present address?
"A. 128 East Bay.
"Q. How long have you been engaged in the shipping business?
"A. Since 1907.
"Q. You have during the past ten years furnished ship's crews?
"A. Yes, sir.
"Q. And run a boarding house or hotel?
"A. Yes.
"Q. Were you in that business in 1920?
"A. Yes, sir.
"Q. Did you operate a hotel during that time?
"A. Yes, sir.
"Q. What was the name of that hotel?
"A. Zahm's.
"Q. Are you still operating the hotel?
"A. Yes, sir.
"Q. That is the one you were operating then?
"A. Yes, sir.
"Q. Do you know the plaintiff in this case, John Johnson?
"A. Yes, sir, I do.

"Q. How long have you known him?

"A. I have known him about ten years.

"Q. Well, do you know where John Johnson was staying in August, 1920?

"A. He stopped at my place.

[fol. 193] "Q. About how long had he been with you up until the time he left, in the early part of August, 1920?

"A. He had been staying there about ten days, perhaps.

"Q. Prior to that time, had he ever stayed with you on different occasions?

"A. Yes, sir, several times.

"Q. That was probably when he would come back on other ships?

"A. Yes.

"Q. During the period of time that you knew Mr. Johnson was he a sailor man?

"A. Yes, sir, he was a sailor man.

"Q. And he had been, to your knowledge, a seafaring man for about ten years?

"A. Yes, sir.

"Q. On the occasions that he was stopping at your hotel, did you have opportunity to observe his conduct?

"A. Yes, sir.

"Q. As to sobriety?

"A. Yes, sir.

"Q. Just state generally, in a brief statement, just what kind of a man this John Johnson was?

"A. He was a quiet, decent kind of a fellow, you know, because I never have seen him intoxicated. When he was stopping the last time at my place, I can't remember seeing him intoxicated; he seemed to be a sober man, and quiet and clean. That's all I could say about him.

"Q. Was he ever boisterous or rough acting?

"A. No. Always has been quiet.

"Q. Do you remember about what time he left your place, what day of the month he left your place to go aboard a certain ship?

"A. I do not remember just exactly the date.

"Q. Do you remember that he took a ship in Jacksonville when he was living at your place the last time?

"A. I do.

[fol. 194] "Q. And this was in August of 1920?

"A. In August, 1920.

"Q. Do you remember whether or not you saw him that morning?

"A. I saw him that morning, but I haven't seen him since.

"Q. Was that close around noon?

"A. In the forenoon.

"Q. It was in the forenoon. Do you remember what his condition was at that time, whether or not he was under the influence of intoxicating liquors?

"A. At that time his condition when I seen him, was all right, he was sober then, to my knowledge.

"Q. Did you ever see him after an accident had happened to him aboard a certain ship in this port?

"A. No.

"Q. You have never seen him since the forenoon of the day that he left your place?

"A. No, I never have.

"Q. Do you know of your own knowledge whether or not, after leaving your place, he went aboard a ship known as the steamship 'Jacksonville'?

"A. I was informed he went aboard the steamship 'Jacksonville.'

"Q. You don't know yourself, whether he did or not?

"A. I don't know myself, no, he was to go aboard that ship as a watchman.

"Q. He was a watchman aboard that ship?

"A. Yes, sir.

"Q. During the whole ten years you have known Johnson, and he stopped at your place several times, you have never seen him under the influence of intoxicating liquors, have you?

"A. I don't remember that I ever seen him that way or not.

"Q. But during this time he has been a quiet, decent, well behaved sort of a man?

"A. Yes.

[fol. 195] "Q. You never had any trouble or any objections to him at all?

"A. I never did.

("That's all.)

("Witness excused.")

Plaintiff rests.

MOTION TO DISMISS

Mr. Cunningham: I move to dismiss the complaint herein on the ground that the plaintiff has failed to establish facts sufficient to constitute a cause of action against the defendant and on the ground that he has failed to show any negligence on the part of the defendant, and also the facts disclose that the plaintiff is a licensee and that there is no duty owing by the defendant to the plaintiff arising from that beyond refraining from wilfully injuring him.

The Court: What negligence do you contend?

Mr. Axtell: This was their ship and not only the crew—

The Court: What was the negligence?

Mr. Axtell: Failing to have this gangway properly secured at the lower end, if they were going to use the planks, and in failing to have a proper gangway under the existing circumstances.

The Court: That is the negligence that you are contending?

Mr. Axtell: I do not want to limit myself here to the pleadings. My cause of action is stated in the libel.

The Court: Motion denied, and the defendant may be given an exception. That indicates no opinion on my part, but I think there is a question of fact that I am bound to submit to the jury.

Testimony closed.

Counsel summed up the case.

[fol. 196] CHARGE TO THE JURY

March 28, 1927.

CAMPRELL, J.:

GENTLEMEN OF THE JURY: You are the sole judges of fact. I am not going to spend any time talking to you about the facts because you have heard them. I may refer to some facts in order to make clear my instructions on the law; but because I might pick out some particular fact does not mean that that is more important than the others, except that I find it necessary simply for my explanation. All of

the facts are important, because in approaching a case of this kind we all labor under the limitations of humanity. We are all of us sorry for the man who is hurt. Sorrow in us as individuals in an expression of our individual opinion is perfectly proper. We have a perfect right to be sorry and we have a perfect right to be generous with our own money; but sorrow for someone, coupled with generosity in the expenditure of the money of somebody else, is not your province as jurors.

We started with the proposition that this man has been hurt; but the mere fact that the man suffered injuries, standing by itself, makes no one liable.

Let us get that clear. There can be no liability of any kind on the part of this defendant simply because the man was hurt. There can be no liability at all unless this defendant was guilty of negligence.

I will instruct you on the limit that there may be to their liability because of certain conditions, but I first want you to understand that there must have been negligence or [fol. 197] there is no liability, and then there would not be any necessity of any further consideration.

The defendant has pointed out what it contends was the method of the construction of this gangway. The plaintiff was a seaman, a man who had followed the sea. He says that he was seeking a job. I don't mean a mariner necessarily, but a ship's carpenter, a man who has followed the sea. He testifies to you the way he says this gangway was built. He said he came down the plank safely, and the testimony is that many other people had used the plank. The testimony is that there has been no complaint of any accident to anybody else. He says when he went back to go up the plank something happened. What he says happened was that this plank was swinging as to its end on the side toward the ship. He says it was hanging by a line which ran from the guide to the smokestack, as I remember it. He said that on that end it was not resting on the deck or anything on top of the deck, but that it was hanging on this line, and therefore at that end it could swing.

Now the question first is whether or not that end of that gangplank was resting firmly on the bottom or whether it was swinging. You have heard testimony here by the man who said he made the gangway. You have heard the testi-

mony of others, but you have heard his. You have heard the testimony of Mr. Johnson. Which one of them is right in that particular? Was this gangplank so that it could move sidewise, suspended by a line, or was the end of it resting on a box of some kind which was on the deck of the ship?

[fol. 198] What was the proper way to build the gangplank? Was this gangplank properly constructed? Was it adequate for the purpose for which it was built. Did the accident happen in the way Mr. Johnson says it happened? There is no doubt of the fact that there was a hand line. Mr. Johnson says there was one, and the defendant's witnesses say there was one. Mr. Johnson says that line went through an eye at the top of the stanchion made fast to the gangway. The man who made the gangway says no, that there was no such stanchion, and that in order to place one there he would have had to put holes through and he would have had to put a plate underneath and carry the bolts from the stanchion through that plate underneath, and so fasten it. He says he did not do it.

If the stanchion was there or was not there, did the presence of the stanchion or the absence of the stanchion in any way make this gangway of improper construction? If the stanchion was there and the line led through the stanchion, the hand line, then did the accident happen as Mr. Johnson says it did? If the hand line was there on the right hand side did he fall with his left arm around that stanchion, and did his arm break as he fell?

If the gangplank or gangway was made fast on the ship alongside, lashed as described, and the lower end of that gangplank rested on the box, was that proper construction? Was it a safe construction? Was it one that had been used in safety?

There is no evidence here that any break of any kind was found in the gangway after the time Mr. Johnson said he fell. The gangplank was there, the hand line was there, [fol. 199] and there is no evidence to show that the gangplank was broken or that the hand line was broken or that the gangway was in any way broken. So that it was not the breaking of anything that was there which caused this accident. Negligence cannot be predicated upon that. If there was any negligence at all it would have to be in the construction and the rigging of the gangplank.

It is for you to say whether the accident that this man suffered was the result of some fault in the construction of that gangplank; whether or not that gangplank was in a different condition when he used it than when it had been used before when no accident had happened. There must have been some failure on the part of the defendant to perform some duty which rested upon it.

There has been some talk about the gangway that is made with rollers on the end being a part of the equipment of a ship. That may be so. You have heard the testimony; but if the gangplank that was built was sufficient, was safe, and it was not because of any defect or faulty construction or failure to rig it properly that the accident occurred, and if the gangplank was safe and adequate for the purpose for which it was used, there was no requirement that any particular kind of a gangplank should be used. The only requirement would be that one that was safe and adequate for the purpose should be provided and used.

We want to get that clear, because that is the first proposition before us, whether or not there was any negligence on the part of the defendant, or whether this man who had [fol. 200] followed the sea and who saw this gangplank, who must have walked some distance, according to his own testimony, before he got to the stanchion, because the gangplank was about 12 feet long, as I remember it, and the stanchion was somewhere—I don't know exactly the position, but it is shown on the model and sets somewhere, perhaps not quite at the center; it must have favored one side or the other. Consequently, before the stanchion was reached some steps must have been taken. Was the gangplank swinging? Did he know it was swinging? A man who has followed the sea and was familiar with it, did he continue to descend and use it with knowledge, or did it simply commence to swing at the time when he had reached a point upon it when to go back or to go forward would be about the same thing?

These are things to be considered in arriving at the question of whether or not the gangplank was properly swung. It was there. It was before him. If he couldn't see that it was improperly swung, then of course if he ventured upon it, that is one thing. If he could see it and thought it was improperly swung and if he was cognizant of the re-

quirement, then it is for you to say whether or not in using that and continuing to go on it he himself was guilty of contributory negligence and contributed to the happening of this accident. If he knowingly used that which he could see was unfit for this use, then it is a question of fact as to whether or not there was such negligence on his part that it contributed to the accident.

If he was guilty of contributory negligence then he could not recover. If you find that he was guilty of contributory [fol. 201] negligence the verdict would have to be for the defendant.

There has been some evidence here to show how this might have happened. It is a question of fact. Whether or not on the day in question Mr. Johnson and the boatswain were engaged in a pleasant conversation, assisted as might be, by some kind of refreshment, is a question of fact for you. That is only an incident, because the question really is in the beginning whether or not that was a safe, secure gangplank. If the gangplank was safely made and was properly constructed, was properly placed, then if the accident happened by reason of things that the defendant is not chargeable with—whatever they might be—we do not need to spend much time discussing that. It is for you to determine. You do not have to account for everything that made up this situation. The question is whether or not this gangplank was negligently used because improperly constructed or improperly placed. If it was properly constructed, if it was adequate for the purpose, if it was properly placed, then, serious as it might be, whatever might be the reason for the happening of the event, that would not be chargeable to the defendant.

Now there comes another question and that is what right the plaintiff had upon the ship. There has been quite a little testimony taken to show that. As I understand the plaintiff's position—and, gentlemen, it is not my recollection of the testimony nor counsel's but yours, that counts—but as I understand it the plaintiff's position is that he was invited to come on that ship by the boatswain, to get a job. That is my understanding. If I am in error about it, it is [fol. 202] for you to say. I do not understand that Mr. Johnson says that he was invited on the ship to enjoy the fellowship or the society of the boatswain. I do not under-

stand that he testified here that the boatswain invited him down there to pay him a friendly call, as one person might invite another, and that the boatswain might say the ship was his home and he invited Mr. Johnson as his guest to enjoy his society. I do not understand that he so testified. My understanding is that he testified that he was invited to come down there to get a job. If that be so, we are not concerned with an invitation to enjoy society and fellowship. If he was invited by the boatswain to come and get a job, then the question is whether or not the boatswain had authority from the owners—that is, through those representing the owners, his superior officers—to invite this man to come on the ship, because if the evidence satisfies you that the plaintiff came on board on his own business, for the purpose of seeking employment for himself alone, then he was a mere licensee and therefore entered the ship at his own risk, subject to concomitant perils thereof. If he came on the ship at the invitation of the boatswain to get a job, and the boatswain had no authority from those who were over him to extend any such invitation—and I mean by that, if he was not requested by those over him to procure the presence of this man that they might employ him—then he came on board the ship at the invitation of the boatswain thereof and to seek or procure employment for himself and he was a bare licensee, not an invitee, and took the risks that were concomitant with that.

If he was a mere licensee, then the owners of the ship [fol. 203] owed no duty whatever to him as to the condition of the ship, except that the owners should not wantonly or wilfully cause the plaintiff harm or knowingly let him run upon a hidden peril. That is their complaint. The owner could not put the man in a place without warning, and the owner could not suddenly withdraw any protection, but the owner is not held to that high degree of care toward the licensee that he owes toward those who are on the ship at his invitation, or because of their employment, or because they are passengers.

Now, was there any condition of this ship which showed any wanton or wilful carelessness? Was the man subjected to some hidden peril? This is the gangplank; it is open, and he could see it, and he was a man who followed the sea, and if he was a mere licensee there and he could see this

gangplank, was there anything wanton or wilful, or was there any hidden peril to which he was exposed? A person who is neither a passenger, servant, nor a trespasser and not standing in any contractual relation with the owner of the ship, who is permitted to go on the ship for his own interest, convenience, or gratification, is a licensee. That means that if he went on there seeking a job, if the boatswain said there might be a job on the ship, or somebody said to him there might be a job on the ship and he went down there to look for that job he would be a mere licensee. If an officer in authority, primarily the master or the chief officer, who might be charged with the authority of procuring members of the crew, directed or requested the boatswain to get Johnson or to get a man and bring him on the ship, then it is a question for you gentlemen to say [fol. 204] whether or not the man comes on not on his own business alone but on the business of the defendant, in which event a person there because of business with the defendant, not for his own benefit alone, would be a person who was entitled to the same protection as anybody who was directly invited to come on. That is the question, if there was any negligence. If there was no negligence, then all that question of whether he was a licensee or whether he was an invitee of course is of no moment, because if there was no negligence, then there is no liability anyway.

If there was negligence, and if there was a duty greater than that owed to a mere licensee due to Mr. Johnson from this ship and the officers, and if that duty was not performed because of some negligence, such as the failure to perform a duty which, in this instance, would be the failure to properly construct the gangway and properly place it, especially that it be properly placed, because there is no evidence that the gangway or the hand line was broken, and whether that was adequate for the purpose, with forty members of the crew and forty other men working on the ship and using it—if there was negligence then the question of damages will come before you.

It has been stated here and has not been contradicted, that for the two years and a half or three years that Mr. Johnson was receiving medical attention and hospital treatment, he was under no charge. That was all given to him by the Government or governmental agency. Therefore the

question would be a question of pain and suffering and loss to him; if this company was guilty the loss to him of such [fol. 205] use as he may have lost in the arm and knee and such damage as he might have by reason of pain and suffering and decrease in earnings.

The testimony has been offered here that he is working and is receiving pay, the amount of pay being in excess of the amount of money that he received in his former employment; but in the former employment he did receive his maintenance, his room and his food.

So the question rests with you; the question of fact to be determined. Let me repeat it to you. Was there any negligence? Did the defendant fail in the performance of a duty which it owed, or was this purely an accident due to some happening on the part of Mr. Johnson himself—whatever it might have been. If there was any negligence on the part of the defendant, was Mr. Johnson on that ship by the authority of anyone who had a right to invite him there on behalf of the owner, and thus an invitee, or was he a mere licensee as to whom the defendant owed but a limited duty? Because the defendant was not bound to keep the ship in absolutely perfect condition. They were not bound to use the most approved and the best appliances. They were bound to use appliances that were customarily and ordinarily and commonly used and adequate for the purpose for which they were used.

If you should find these questions answered in favor of the plaintiff, then and only then would you come to the question of damages. I have described to you generally what has been shown here as the basis on which they could be secured.

There is a conflict in the testimony, there is no doubt about that. As to many of these questions it depends on [fol. 206] whom you are going to believe. You have a right to consider. The plaintiff is interested. He is seeking to recover. You have his statement of his injuries. They were quite severe. You have a right to consider whether his recollection of what happened at that time is as good as it might have been under other conditions. You have a right to consider here, as to every witness, the long lapse of time, because this happened in 1920 and we are trying the case in 1927.

In determining the weight and credence you are going to give the testimony as to each witness, you have a right to consider their manner and demeanor, the way in which they testify. Did they answer openly, honestly? Did they attempt to hide anything? Did they show any desire for concealment? Was their testimony given in a way that convinced you that as honest men they were telling the truth as they saw it? They didn't have to tell it in your language or in mine, but in their own. Did they impress you—take the witnesses one by one—as being honest? What was their opportunity for observation? That is very important. Who had the best opportunity for observation? Did they testify to more than they could have seen? Did they testify to more than they could remember? Or did they each of them or any of them testify fairly to the things that they clearly could have seen in the positions in which they were placed? Those are matters to determine in deciding who you are going to believe, and you have got to determine who you are going to believe as to the way in which this gangway was built and as to the way in which it was placed. What were their relative opportunities of observation? Whose testimony carries with it the greatest [fol. 207] probative force as being based upon the best observation and the best opportunity for knowledge? That is true of every other incident. I am not trying to go over the testimony, but I must refer to some of it to attract your attention.

Now, in addition to that, it may be possible for you to believe every witness and to get out of their testimony the one story which makes the perfect picture. It is not for me to say whether you can or cannot; but if it is not possible then you have got to determine whether the witnesses were telling the truth, and that applies to every witness, including the plaintiff, because he took the stand as a witness. If you believe that any witness who took the stand knowingly and wilfully testified falsely as to a material fact—not immaterial things—you have a right to disregard all the testimony of that witness. You are not bound to do it, but you may accept that which you believe to be true and reject that which you believe to be false. It is a rule of human reason that has been engrafted on law, and you have applied it day after day in your lives, and prob-

ably never knew that such a rule existed. It is the rule of false in one thing false in all things. In other words a man who tells me a falsehood about a material fact is under grave suspicion as to the other statements that he may make. You have a right to apply that rule. If they are all honest and truthful, if some have made mistakes, if some could not see what they said they saw, then it is for you to determine who is telling the truth.

During the trial, gentlemen, my position required that I should see that the trial was conducted in accordance with [fol. 208] the law. I want you to get out of your minds that I have any opinion on these facts. I have other things to do. It is not for me to determine the facts. That duty rests with you. The responsibility is yours and it is a great responsibility. The responsibility rests with me to inform and to instruct you on the law and you are bound to take my instructions on the law. If you think some of my instructions are not in accordance with your ideas, don't worry about that, because there is a way to correct my errors. I alone am responsible for the instructions on the law, and if I make any errors they can be corrected. You are responsible for the determination of the facts. I indicate to you no opinion. I am not interfering with your prerogative; don't interfere with mine.

If in the course of the trial I have allowed or disallowed evidence, if I have granted or refused to grant motions, that indicates no opinion on my part. You gentlemen can disregard that. That was in the performance of my duty that this trial should be conducted under the form of law.

When you retire, start right. Start as I started. First determine from the ground up, try to determine these issues just as I have presented them to you as to the law, using your own opinion as to the facts; but remember that this case, like every other case, is not to be decided by sympathy. It is not to be decided by vengeance. The object of this action is not to punish anybody. The object of this action, so far as the plaintiff is concerned, is to be reimbursed, to be made whole so far as he may be, so that he would stand forth relatively in the same position that he would stand if the accident had not occurred. You are not [fol. 209] here to mete out punishment or strike a man over the back of anybody. You are here to determine a

question of fact without sympathy, without vengeance, without bias, and not on prejudice or your preconceived opinions; not on anything but the evidence which has come from the mouths of witnesses, as read from the depositions or found in the evidence that has been offered either in the form of models or otherwise.

PLAINTIFF'S REQUESTS TO CHARGE

Mr. Axtell: I have no exceptions, but I will ask if I may make one or two requests as to further charge. I ask your Honor to charge the jury that on considering the question of negligence they may consider the question whether or not they believe from the evidence that a gangway with wheels on it was part of the regular equipment of the ship.

The Court: Yes; but the fact of whether it was or not is not the main question. The question is was the gangway that was provided adequate, proper and safe. That is the question.

Mr. Axtell: Exception. I ask your Honor to charge the jury that the failure of the defendant through its captain or other witnesses to offer any evidence that they made any shoe for the end of the gangplank or rounded off the ends of the planks may be taken into consideration in determining whether the gangway was on the box or was hanging from the ropes.

The Court: I have heard no evidence in the case that that is a proper way to make a gangplank, and neither the jury nor myself have a right to use our judgment as to what was proper, except in line with evidence that has been given on the trial. Whether that would be a proper way to build a gangplank or not has not been testified here. [fol. 210] Mr. Axtell: Sometimes the absence of evidence is evidence.

The Court: I will charge the jury that they are to return a verdict only on the evidence.

Mr. Axtell: Exception. I ask your Honor to charge the jury that if they find that there was a watchman on this pier and that these watchmen permitted the plaintiff to

pass and to go on board the ship, that they may find that he was not a trespasser, at least, on a ship.

The Court: He was a licensee on a vessel. I decline to charge that. I will not charge any more than I have charged. I have told the jury to take into account all the facts. It is for the jury to determine whether he was a licensee or not.

Mr. Axtell: Exception. I ask your Honor to charge the jury that if they find that the gangway was rigged with two lines when the plaintiff went on board and that one of the lines was removed by some member of the crew during the time he was on board so that the plank was caused to move one side with his weight upon it, that that constituted a danger for which they would be liable.

The Court: I decline to assume the prerogative of the jury.

Mr. Axtell: Exception. I ask your Honor to charge the jury the rules on the question of contributory negligence as to this maritime law.

The Court: I decline. The action does not lie in admiralty and was not so brought.

Mr. Axtell: Exception.

Mr. Cunningham: I ask your Honor to charge the jury that they may consider the failure on the part of the plaintiff to call the boatswain, who he alleges invited him on [fol. 211] board the ship at the request of the officers.

The Court: The jury have a right to consider everything; but on the testimony I cannot charge that. He has accounted for his failure to call that witness.

VERDICT

(The Marshal is sworn and the jury retire at 6:05 P. M. and return at 9 P. M. with a verdict for the defendant.)

MOTION TO SET ASIDE VERDICT

Mr. Axtell: I move to set aside the verdict, on the ground that it is contrary to the weight of evidence, and on all the grounds specified in Section 549 of the Civil Practice Act.

Motion denied.

Mr. Axtell excepts.

ORDER SETTLING BILL OF EXCEPTIONS

Upon the annexed stipulation, the foregoing bill of exceptions is hereby settled and allowed, consented and ordered on file, and made a part of the record in this cause.

Dated September 21, 1927.

Marcus B. Campbell, U. S. D. J.

[fol. 212] IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION SETTLING BILL OF EXCEPTIONS

It is hereby stipulated, consented and agreed by and between the attorneys for the respective parties hereto that the foregoing bill of exceptions contains all the evidence introduced on the trial of this action and contains all the objections and exceptions made during the trial of this action, and that the same may be settled and allowed, signed, filed and made a part of the record in the above entitled cause.

Dated New York, August 8, 1927.

Silas B. Axtell, Attorney for Plaintiff. William A. DeGroot, United States Attorney, Attorney for Defendant.

[fol. 213] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR WRIT OF ERROR

John Johnson, plaintiff herein, feeling himself aggrieved by the verdict herein in favor of the defendant, and by the judgment entered and filed in this cause in the office of the Clerk of the United States District Court for the Eastern District of New York on the 18th day of April, 1927, in favor of the defendant, United States Shipping Board Emergency Fleet Corporation, and against the plaintiff, John Johnson, for the sum of Twenty-five ($25.00) Dollars,

comes now by Silas B. Axtell, his attorney and prays for the reversal of said judgment, and to that end *and* prays that a writ of error may issue in his behalf to the United States Circuit Court of Appeals for the Second Circuit for the correction of errors, so complained of, all of which will more in detail appear from the assignment of errors which is filed with this petition; and that a transcript of the record, proceedings and papers in this cause, duly authenticated may be sent to the said Circuit Court of Appeals.

Dated New York, June 1st, 1927.

Silas B. Axtell, Attorney for Plaintiff. Office & P. O. address: 11 Moore Street, New York, N. Y.

[fol. 214] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER ALLOWING WRIT OF ERROR

This, the 20th day of June, 1927, came the plaintiff by his attorney and filed herein and presented to the Court his petition praying for the allowance of a writ of error, an assignment of errors intended to be urged by him, praying also, that a transcript of the record and proceedings and papers upon which the judgment herein was rendered, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Second Circuit, and that such other and further proceedings may be had as may be proper in the premises.

On consideration whereof, the Court does allow the writ of error.

Dated June 20, 1927.

Marcus B. Campbell, U. S. D. J.

[fols. 215 & 216] Citation, in usual form, showing service on Wm. A. DeGroot, omitted in printing.

[fol. 217] IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENT OF ERRORS

The plaintiff in this action, in connection with his petition for a writ of error makes the following assignment of errors, that he avers were committed upon the trial of the above entitled cause, to wit:

1. That the verdict of the jury was contrary to the weight of evidence, and that the Court erred in denying plaintiff's motion to set the verdict aside.

2. That the trial Court erred in charging the jury as follows: "If he was guilty of contributory negligence then he could not recover. If you find that he was guilty of contributory negligence the verdict would have to be for the defendant."

Dated New York, June 1st, 1927.

Silas B. Axtell, Attorney for Plaintiff. Office & P. O. address: 11 Moore Street, Borough of Manhattan, City of New York.

[fol. 218] IN UNITED STATES DISTRICT COURT

PLAINTIFF'S EXHIBIT 12

ANDREU

Cross:

A. I have.

Q. Then the end of the gangplank resting on the "West Campo" was about three or four feet higher than the end resting on the "Jacksonville"?

A. The "Jacksonville" end was the lowest.

Q. About how much lower was the "Jacksonville" end than that on the "West Campo" end?

A. Around four feet.

Q. Do you remember how the end of the gangplank was made fast on the "Jacksonville"?

A. It was on a box.

Q. Do you know whether the end of the gangplank was lashed to any part of the ship on the "Jacksonville," or just resting on the box?

A. I don't know. It was on a box is all I know, sir.

Q. Was there any stanchion or handrail on this gangplank?

A. Yes.

Q. There was a stanchion on it?

A. Yes.

Q. Do you know what the stanchion was made out of?

A. Made of an iron pipe.

Q. Was that made fast to the gangway?

A. Yes.

Q. Do you know whether or not there was a line made fast to that stanchion?

A. Yes.

Q. Then the line, one end then was carried to the "West Campo" and made fast, and the other end made fast on the

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[fol. 219] IN UNITED STATES DISTRICT COURT

PLAINTIFF'S EXHIBIT 13

ANDREU

Cross:

A. Yes.

Q. Were you on a watch?

A. No, sir.

Q. You were one of the day gang?

A. Yes, sir.

Q. Do you remember whether or not you were working that day?

A. I was working that day, yes.

Q. What time of day was it you saw Mr. Johnson in the water? Between these two ships?

A. It was night.

Q. Was it light or dark?

A. Dark.

Q. This was in August, 1920?

A. I couldn't say. It was in 1920 but what month I don't know.

Q. Was it soon after you went aboard the "Jacksonville"?

A. About two weeks.

Q. And you went aboard in July?

A. I don't remember when I went aboard.

Q. Well, was it in the summer or fall?

A. It was summer.

Q. Then it had to be somewhere around seven o'clock at night to be dark?

A. Not necessarily.

Q. Do you know whether the sun was up or not?

A. It was down.

Q. Did this accident happen after you had knocked off for the day?

A. Yes.

Q. How much higher was the "West Campo" than the "Jacksonville" out of the water?

[fol. 220] IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION AS TO EXHIBITS

It is hereby stipulated, consented and agreed by and between the attorneys for the respective parties hereto that all of the exhibits marked in evidence during the trial of the above entitled case need not be reproduced in the record on appeal, but may be offered at the argument of the appeal, by counsel for either side.

Dated New York, October 5, 1927.

Silas B. Axtell, Attorney for Plaintiff. William A. De Groot, United States Attorney, Attorney for Defendant.

[fol. 221] IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION AS TO RECORD

It is hereby stipulated, consented and agreed, that the foregoing is a true transcript of the record of the said District Court in the above entitled action as agreed on by the parties for the purposes of this appeal.

Dated New York, October 5, 1927.

Silas B. Axtell, Attorney for Plaintiff. William A. De Groot, United States Attorney, Attorney for Defendant.

[fol. 222] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 223] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT, OCTOBER TERM, 1927

No. 194

Argued March 8, 1928. Decided March 19, 1928

JOHN JOHNSON, Plaintiff in Error,

v.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, Defendant in Error

In Error to the District Court of the United States for the Eastern District of New York

Before Manton, L. Hand, and Swan, Circuit Judges

OPINION

Writ of error to the District Court for the Eastern District of New York. Suit by John Johnson, plaintiff, against the United States Shipping Board Emergency Fleet Corporation, defendant. Judgment for defendant; plaintiff appeals. Affirmed.

Silas B. Axtell, of New York City (Myron Scott, of New York City, of counsel), for plaintiff in error.

William A. De Groot, U. S. Atty., of Brooklyn, N. Y. (Edgar G. Wandless, and Frederick H. Cunningham, both of New York City, of counsel), for defendant in error.

PER CURIAM:

This action was brought to recover for personal injuries sustained by the plaintiff in error, who said he was an invitee—seeking employment as a ship's carpenter—on one of the defendant in error's boats, and was injured while walking on a gangplank, which he claimed was not firmly in place. The jury found against him on the issue of negligence.

The plaintiff in error assigns error for the charge of the court, which instructed the jury that, if the plaintiff in error was guilty of contributory negligence, he could not recover. The plaintiff in error now argues that this was a maritime tort, and that the maritime law controls, and therefore the contributory negligence was not an absolute bar to a recovery. We think the court correctly instructed the jury, under the authority of Belden v. Chase, 154 U. S. 674, 14 S. Ct. 264, 37 L. Ed. 1218, Atlee v. Packet Co., 21 Wall. 389, 22 L. Ed. 619, and Maleeny v. Standard Shipbuilding Co., 237 N. Y. 250, 142 N. E. 602. We have not overlooked the Castagna Case (C. C. A.) 280 F. 618 where, in a dictum, it was inadvertently stated the rule is different than stated in Belden v. Chase, supra.

Judgment affirmed, with costs.

[fol. 224] IN UNITED STATES CIRCUIT COURT OF APPEALS

At a stated term of the United States Circuit Court of Appeals in and for the Second Circuit, held at the courtrooms, in the Post Office building, in the city of New York, on the 26th day of March, one thousand nine hundred and twenty-eight.

[Title omitted]

Error to the District Court of the United States for the Eastern District of New York

DECREE—Filed March 28, 1928

This cause came on to be heard on the transcript of record from the District Court of the United States for the Eastern District of New York and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be, and it hereby is, affirmed, with costs.

It is further ordered that a Mandate issue to the said District Court in accordance with this decree.

M. T. M., L. H.

[File endorsement omitted.]

[fol. 225] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 226] IN SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 8, 1928

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File No. 33,529. U. S. Circuit Court of Appeals, Second Circuit. Term No. 220. John Johnson, petitioner, vs. United States Shipping Board Emergency Fleet Corporation. Petition for writ of certiorari and exhibit thereto. Filed June 22nd, 1928. File No. 33,529.